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ABSTRACT

This manual is designed to serve as a guide to federal regulations related to international educational exchange, focusing on visa and immigration regulations that affect foreign students at colleges and universities in the United States. Fourteen sections focus on: (1) introduction to immigration law; (2) the legal status of nonimmigrants in the United States; (3) the responsibilities of enrolling institutions; (4) F visa status, students; (5) M visa status, students; (6) O visa status, persons of extraordinary ability; (7) P visa status, artists, athletes, and entertainers; (8) Q visa status, international cultural exchange visitors; (9) J visa status, exchange visitors; (10) H visa status, temporary workers and trainees; (11) R visa status, temporary religious workers; (12) other nonimmigrant classes; (13) immigrant status; and (14) special topics. Thirteen appendixes provide information on the Immigration and Naturalization Service (INS) fee schedule, sample immigration forms, sample visa stamps and labels, INS and U.S. Department of Labor regional offices, visa issuing posts, an annotated reference list, countries having passport agreements with the United States, Canadian visitor visa exemptions, and the Association of International Educators government regulations advisory committee and its position on J-1 visa visitors. (Contains 46 references.) (MDM)

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Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars

1994–95 Edition

Edited by Amy Yenkin

HE028 676

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NAFSA: Association of International Educators promotes the exchange of students and scholars to and from the United States. The association sets and upholds standards of good practice and provides professional education and training that strengthen institutional programs and services related to international educational exchange. NAFSA provides a forum for discussion of issues and a network for sharing information as it seeks to increase awareness of and support for international education in higher education, in government, and in the community.

NAFSA's members share a belief that international educational exchange advances learning and scholarship, builds respect among different peoples, and encourages constructive leadership in a global community.

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Introduction

In 1966 the National Association for Foreign Student Affairs (now NAFSA: Association of International Educators) published its first manual on U.S. immigration law as it pertains to foreign students and scholars. The authors of that first manual, which followed a number of related publications by various NAFSA members, were Robert B. Klinger (University of Michigan), Furman A. Bridgers (University of Maryland), and Robert B. Lindsey (Immigration and Naturalization Service). Bridgers revised the *Manual* in 1969 and again in 1972. It was rewritten in 1975 by members of NAFSA's Advisory Committee on Government Regulations, under the chairmanship of Alex Bedrosian (New Jersey Institute of Technology) and revised in 1979, 1981, and 1983. It was rewritten again in 1989 under the direction of Gary Althen (University of Iowa) and Eugene Smith (University of Colorado), and in 1992, under the direction of Alex Bedrosian. The present volume is the 1994 edition of NAFSA's *Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars.*

In all its editions, the *Manual* has been an indispensable reference for those concerned with international educational exchange, particularly in the current era of constantly changing regulations. Through these publications, advisers to foreign students and scholars have become familiar with many aspects of immigration law and procedures and have been aided in performing their duties more effectively.

Contents and Style. Considerable attention has been given to the organization of the material in this volume. Major topics are presented as separate entities. For example, the section on student (F) status contains most of the essential information on that topic. Therefore, advisers dealing primarily with F-1 students will need generally to refer to that section alone. Advisers are encouraged to acquaint themselves with the entire contents of the *Manual,* however, so that they will be aware of all possible contingencies.

Although earlier editions of the *Manual* concentrated on nonimmigrant classifications and status, in recent years the status of immigrants has become more important. Therefore, since 1992 the *Manual* has included additional information about immigrant status and other topics. The sections on immigrant status (Section 13) and on temporary worker or trainee status (Section 10), for example, reflect the changes brought about by the Immigration Act of 1990 (the Act), signed into law on 29 November 1990 (PL 101-649; 104 Stat. 4978).

Where the precise wording of a law or regulation is required, the Act or the Code of Federal Regulations (CFR) is quoted verbatim. In all cases where information comes from the Act or the CFR, the appropriate section is cited, for example, 8 CFR 214.2(f).

The annotated bibliography (Appendix 8) lists and describes references that the authors have drawn upon and that advisers may wish to have available for their own use.

As stated above, the authors have sought to incorporate essential information about a specific immigration classification into the section of the *Manual* corresponding to that classification. This has caused some redundancies of material and references. The authors felt this was preferable, however, to burdening the reader with many cross-references.

Limitations. The *Manual* makes frequent reference to the Act, formally known as the Immigration and Nationality Act with Amendments and Notes on Related Laws, PL 101-649, 104 Stat. 4978. It also cites current editions of Title 8, "Aliens and Nationality," Title 22, "Foreign Relations," and Title 20, "Employees' Benefits," of the CFR. It does not presume to substitute for those works. It is primarily a layman's digest of immigration law and regulations as they pertain to foreign students and scholars and a guide to the interpretation and use of that material. Individuals desiring a more comprehensive treatment of immigration law and regulations should refer to the above documents.

In interpreting the material in the *Manual,* foreign student advisers should be aware of their own limitations when working with complicated legal matters. An adviser should recognize when it is necessary to call for the services of a trained immigration attorney. Failure to do so may have long-range deleterious effects on the lives of the students and scholars whom the advisers are, in fact, trying to help. On the other hand, counseling provided by advisers on the basis of information provided in the *Manual* may often save the student or scholar money and obviate needless correspondence, hearings, and appeals.

Laws and regulations are subject to interpretation by those responsible for their administration. Immigration law grants discretionary authority to INS, and thus to

INS district offices, but this will be reduced as INS service centers process most nonimmigrant applications. Because local practice varies, it is impossible to provide detailed, specific information and guidelines to meet every contingency. The authors have therefore attempted to provide objective, basic background material that will assist foreign student advisers in responding effectively to local variations.

Updating the Manual. Immigration regulations, forms, and procedures change frequently. NAFSA reports such changes through the NAFSA *Newsletter*, the *Government Affairs Bulletin*, the Inter-L electronic discussion group, and in section updates and successive editions of the *Manual*. Although the purchase price of the 1992 edition of the *Manual* included two free updates, the selling price of the 1993 and subsequent editions carries no such automatic updating. Why? A large portion of NAFSA's publications sales move through institutional purchasing offices; shipments are made to central receiving points on campus. Free updates tend to get lost in such systems, which depend on purchase order numbers to route material. Compounding the problem is the high turnover in the ranks of *Manual* users. We have attempted to ease the burden of successive updates and editions by providing purchasers of this edition of the *Manual* with two valuable vouchers they can use to keep their *Manual* up to date.

Advisers desiring a daily record of proposed changes in the regulations should subscribe to the *Federal Register*. Relevant material published in the *Federal Register* usually appears shortly thereafter in a condensed version in *Interpreter Releases* (Washington, D.C.: Federal Publications). Appendix 8 contains subscription information on these and other publications.

—Amy Yenkin, Editor

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Acknowledgments

NAFSA: Association of International Educators is grateful to the many persons who contributed their time, effort, and expertise to this revision of the *Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars*.

The 1994-95 edition of the *Manual*, although new in important respects, reflects the contributions of the editors and authors of the editions of 1989, 1992, and 1993, notably Gary Althen (University of Iowa), Eugene Smith (now retired from the University of Colorado), and Alex Bedrosian (retired from the New Jersey Institute of Technology.

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The headquarters of the Immigration and Naturalization Service (INS), the Department of Labor, the Visa Office of the Department of State, and the Exchange Visitor Facilitative Services Staff of the U.S. Information Agency (USIA) were given the opportunity to review the final draft of the 1992 edition, upon which the current edition is based. INS headquarters was given the opportunity to review the penultimate draft of this edition. Some government reviewers provided useful suggestions that have been incorporated into the *Manual*. However, their suggestions should in no way be interpreted as constituting an official endorsement of the *Manual*. The revision team did not always agree with their views; therefore, the publication is written from the perspective of NAFSA and not of the federal agencies.

Special thanks to Gudrun Kendon (formerly of Georgetown University) for reviewing and updating the appendixes and to Doug Mollenauer (NAFSA Government Relations Department) for collecting relevant forms.

The NAFSA Publications Department—Steven Kennedy, Mark Bowerman, and Jennifer Kemp—devoted significant time and effort to the production of the *Manual* and are thanked for their hard work.

—Amy Yenkin, New York City, November 1994

Contributors

Sam Bernsen served as general counsel of the Immigration and Naturalization Service and as assistant commissioner for adjudications in a career that spanned 38 years. Author of over a dozen articles on immigration law, he has lectured before consular officers at State Department's Foreign Service Institute and before immigration officers at INS training schools. He served as director of legal research for the Select Commission on Immigration and Refugee Policy, and has testified before congressional committees and addressed many bar groups on immigration law. Holder of the rank of Distinguished Lecturer at Catholic University Law School, he presently practices immigration law as head of the Washington, D.C. office of Fragomen, Del Rey & Bernsen while teaching immigration law as adjunct professor at American University Law School.

Lorig S. Boyajian is a member of the New York and New Jersey bars. Ms. Boyajian has devoted herself to the practice of immigration and nationality law exclusively since 1983. She obtained a BA in History from the University of Texas at Austin and a J.D. from the Syracuse University College of Law. She pursued graduate studies in the Soviet Union and was involved in corporate law before joining Ronald W. Freeman, P.C. Ms. Boyajian is a member of the American Bar Association and the American Immigration Lawyers Association.

Catheryn Cotten is international adviser at the Duke University Medical Center. While a work/study student, she eagerly read the 1975 edition of the NAFSA *Manual*. After receiving her degree in cultural anthropology, with excursions into international law and cross-cultural legal systems, she took a job as international adviser in an office that had just assumed responsibility for H, J, and permanent-resident visas and foreign medical graduates. Compelled to move from the global perspective of international relations to the minutiae of immigration regulations, she gave up her subscription to *Foreign Affairs* in favor of *Interpreter Releases* and turned again to the NAFSA *Manual* for help. She is pleased to contribute to a publication that has been no more than an arm's reach from her desk for most of her career.

Working in a medical center, she has internalized a philosophy that applies equally well to government regulation and disease: "The goal is to do the work so well that we put ourselves out of business. Unfortunately, Mother Nature and human nature are likely to make that goal unattainable in our lifetime."

Catheryn has been involved with NAFSA at many levels, including state representative, regional representative, regional chair, member, and chair of the Government Regulations Advisory Committee.

Ronald W. Freeman is a noted expert in the field of immigration law, having lectured widely and conducted workshops with special attention to the corporate and academic communities. He holds membership in the American Bar Association, the American Immigration Lawyers Association, the Federal Immigration Bar, and numerous county bar associations in New York State. He is a partner in Ronald W. Freeman, P.C., in New York City.

Marjory Gooding is a fourth generation Coloradoan who was born in Denver and has lived in Boulder for the last 20 years. She has taught art history and architectural history at the University of Colorado-Boulder and at Colorado College. With two teenage daughters and a high tolerance for ambiguity, she spends her time watching kids' sports (plenty), traveling (never enough), skiing (never fast enough), and fretting over INS regulations. For the past 7 years she has been with Foreign Student and Scholar Services at the University of Colorado-Boulder.

Gudrun Kendon received her masters in international education from the School for International Training in Brattleboro, Vermont. Her thesis was on implementing extended orientation programs for foreign students on U.S. campuses. She is author of "Crossing Cultures: A Manual for an Extended Orientation Program for International Students," NAFSA Working Paper no. 46 (1994). Until June 1994 she was a foreign student adviser at Georgetown University. From 1990 to 1993 she occupied the same position at George Washington University. She interned at the Foreign Student Service Council in Washington, D.C., from 1988 to 1990. She is presently living in Amsterdam.

Pravinchandra J. Patel is the author of *Patel's Immigration Law Digest* (5 vols., Clark Boardman Callahan), a digest of all precedent administrative decisions since 1940 as well as all judicial decisions since 1981 under immigration and nationality laws. He is also the author of *Patel's Citations of Administrative Decisions* under immigration and nationality laws and the compiler of various annotated editions of titles of the *Code of Federal Regulations* pertaining to immigration and nationality. He obtained his LL.M. degree from the University of Texas-Austin in 1970. He is a member of the American Bar Association and the American Immigration Lawyers Association. He is also a member of the New York State Bar, the bars of the Federal District Courts for the Southern and Eastern Districts of New York, and of the U.S. Supreme Court. He is of counsel to the firm of Ronald W. Freeman, P.C., New York City.

Richard B. Tudisco admits to having a shared bias of many old hands in the field who learned their regulations on the job—namely, a studious avoidance of the NAFSA *Manual*. As he puts it, "I had lots of reasons, such as 'If it's in the *Manual*, I already know it,' and 'the *Manual* isn't very helpful in providing guidance for real-life situations.'" Over the last few years, his thinking has changed: "The world of regulations has grown infinitely more complex and keeping the full array of regs in one's head—apart from being difficult—is probably not the best use of the space between one's ears. If one needs to know, it now makes more sense just to look it up. I hope my work, which builds on the extraordinary efforts of preceding authors, will expand the usefulness of the *Manual* by providing more practical guidance to those who will need to know everything about F visas—but perhaps not all at once."

Rick is immediate past chair of NAFSA's Government Regulations Advisory Committee. He is director of the international student office, executive director for campus programs, and acting assistant provost at Columbia University.

Jerry Wilcox has worked in Cornell University's international students and scholars office since 1972. During that time he has served many groups within NAFSA, including the Government Regulations Advisory Committee (which he chaired), the Field Service Steering Committee, the Council of Advisers to Foreign Students and Scholars, the Board of Directors, and regional groups. He was NAFSA's president in 1993-94. He is especially interested in the promotion of international living centers on campus and counts his Peace Corps service with Thailand's health department as one of the seminal experiences of his life.

Amy Yenkin is assistant director of the Consortium for Academic Partnership, the scholarships division of the Soros Foundations/Open Society Institute of New York. From 1990 to April 1994 she was assistant director and then staff director of government relations for NAFSA: Association of International Educators. After graduating from the University of Michigan, she worked for two years with the Foreign Student Service Council in Washington, D.C.

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Section 1

Introduction to Immigration Law

Pravinchandra J. Patel and Ronald W. Freeman

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1.1 General

All countries have immigration laws which are designed to control the number and kinds of people who are permitted to enter the country. However, their level of restrictiveness depends upon the country's domestic policy toward limiting population growth. Partly, it also depends upon the extant economic reality prevailing in the country. Throughout its early history, the United States welcomed immigrants without any restrictions. In fact, for the first 100 years of its history, immigration was virtually unrestricted. The first general immigration law and the discriminatory Chinese Exclusion Act were adopted in 1882, followed by other important legislation. This trend then lead to the national-origin quota legislation enacted in 1924. The Immigration Act of 1924, providing for qualitative immigration with numerical limitations, favored immigration from northern and western Europe, discouraged immigration from southern and eastern Europe, and excluded immigration from Asia almost entirely.

In 1965, laws were passed which attempted to erase the quota systems of the past. The United States continued a trend toward openness to immigrants with the passage of the Immigration Act of 1990. This act made it possible for many more immigrants to come to the United States for family or employment reasons. Now, just four years after the passage of such landmark legislation, the United States appears headed towards more restrictive immigration laws. An interesting shift, however, is the recent focus on nonimmigrants (including workers, students, trainees), and the attempt to restrict their entry and benefits.

1.2 The Current Statute

The current Immigration and Nationality Act (INA), also known as the McCarran-Walter Act of 1952, is the basic immigration statute. Enacted on 27 June 1952, it initially continued a form of the national origin quota system, but, with a major amendment in 1965, most of its discriminatory provisions were abolished, and a selection system was introduced for immigration based on family relationships and this country's need for immigrants having particular skills. Since the enactment of the 1952 Act, Congress has not only periodically passed important amendments to this basic legislation, but has enacted other immigration-related independent legislation, such as Chinese Student Protection Act of 1992, and Soviet Scientists Immigration Act of 1992.

1.3 Regulations

While the Act provides the basic structure of the immigration system, the daily operations of the various governmental agencies that administer the immigration laws are prescribed by regulations. These regulations are promulgated by appropriate government agencies or departments, published in the *Federal Register*, and incorporated into the *Code of Federal Regulations* (CFR). Such regulations must be consistent, however, with statute, as well as the U.S. Constitution. Regulations may be declared null and void by the court whenever they are found to be contrary to or in violation of the underlying statute or any constitutional right. As long as regulations are in effect, they have the force of law and are enforced by the courts.

Proposed amendments to the CFR are published in the *Federal Register*, and are normally followed by what is known as a "Notice and Comment" period, i.e., a time during which the public may submit comments, views, or recommendations regarding such proposals. Final regulations are then published in the *Federal Register* and take effect from the date indicated in the regulations. The *Federal Register* is published every day of the week. Each Title of the CFR, however, is compiled and updated annually, incorporating all changes in the existing regulations or all new regulations.

The regulations of the U.S. Immigration and Naturalization Service (INS) are contained in Title 8 of the *Code of Federal Regulations* (8 CFR, "Aliens and Nationality"); those of the Department of State and the United States Information Agency are contained in Title 22 (22 CFR, "Foreign Relations"); those of the Department of Labor are contained in Title 20 (20 CFR, "Employees' Benefits"); and those relating to "Unfair Immigration-Related Employment Practices" and "Practice and Procedure for Administrative Hearings Before Administrative Law Judges" are contained in Title 28 (28 CFR, "Judicial Administration").

1.4 OPERATIONS INSTRUCTIONS

Besides INS regulations, there are internal guidelines, called "Operations Instructions" (OI) which INS officials are required to follow. OIs track the regulatory framework, elaborate on the regulations, and provide detailed instructions and procedures to INS officials in carrying out their duties. In recent years, INS has come to rely on cables to make interpretive changes in policy. Likewise, it has at times used instructions on forms to implement changes not yet published in the *Federal Register*. Similar internal guidelines of the Department of State are contained in the *Foreign Affairs Manual* (FAM) and other periodic communications for guidance to consular officers. The Department of Labor has its own set of operating instructions contained in the "Technical Assistance Guide" (TAG).

1.5 ADMINISTERING AGENCIES

The Act and all other immigration-related provisions in other statutes, are administered and enforced within the United States by the INS, an agency of the Department of Justice; outside the United States they are enforced by the consular posts of the Department of State (State). Within the United States, the Department of Labor (DOL) is also involved in administering the employment-based provisions of the Act affecting certain immigrants and nonimmigrants. The United States Information Agency (USIA) is also involved in administering certain provisions of the Act through its control and supervision of the Exchange Visitor Program.

1.6 IMMIGRANTS AND NONIMMIGRANTS

The Act makes a basic and definite distinction between two categories of aliens: "immigrants" and "nonimmigrants". The former come to the United States with the intention of residing here permanently; the latter come here for a temporary period and return to their country before the expiration of the authorized temporary period. As a general rule, the law presumes that each alien applicant for a U.S. visa or for admission to the United States is an intending immigrant unless the applicant can establish that he or she is a bona fide nonimmigrant under one of the nonimmigrant categories, such as a visitor, student, temporary worker, or exchange visitor. (Advisers to foreign student and scholars are normally concerned with these specified nonimmigrant categories.) The burden of proof thus rests with the alien applicant to demonstrate eligibility for a nonimmigrant visa or entry. Further, most nonimmigrants must also demonstrate that they have a residence in a foreign country that they have no intention of abandoning and that they are coming to the United States temporarily for some specific purpose. There are exceptions, for example, for temporary H-1 and L-1 aliens.

1.7 RECENT LEGISLATIVE DEVELOPMENTS

Three recent legislative developments are worth noting: First, in an effort to stem the increasing tide of illegal or unauthorized aliens entering the United States, Congress passed the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, signed into law on November 6, 1986. The salient provisions of this law seek to: (1) control illegal immigration through sanctions against employers and their agents who knowingly hire aliens not authorized to work; (2) improve INS enforcement and service; (3) legalize the status of aliens who had been in the United States in illegal status continuously since 1 January 1982, by adjusting their status first to that of temporary residents and then to that of permanent residents; (4) create a new category for temporary agricultural workers (H-2A) and provide for permanent residence of certain agricultural workers; (5) prohibit adjustment of status for those nonimmigrants who have not maintained their nonimmigrant status; (6) increase the number of immigrant visas available to natives of dependent areas; (7) confer special immigrant status for some G-4 nonimmigrants; and (8) establish a visa waiver pilot program for citizens of certain countries.

Another significant piece of legislation, also passed in 1986 just a few days after the passage of IRCA, was the Immigration Marriage Fraud Amendments of 1986 (IMFA), Public Law 99-639, signed into law on 10 November 1986. This law was primarily aimed at eliminating or reducing the practice of gaining permanent residence through fraudulent marriages to U.S. citizens or residents. It also provided for exclusion of the aliens who use fraudulent statements or documents to obtain any visa benefit, and thus affects students and scholars applying for visas abroad or immigration benefits in the United States.

Third, after four years of intense efforts by the INS to implement the various provisions of IRCA and IMFA, Congress passed the Immigration Act of 1990, which altered almost every aspect of immigration law (see Section 1.8).

And finally, Congress regularly enacts "technical corrections" to the Act. Most recently, Congress legislated several provisions of interest to readers of the *Manual*, including a temporary provision permitting individual state governments to request residency waivers for J-1 physicians (see Section 9).

1.8 THE IMMIGRATION ACT OF 1990

This important legislation, signed into law on 29 November 1990 (Public Law 101-649), is universally recognized as the most sweeping and far reaching reform of this country's legal immigration system in the last 38 years. It primarily constitutes a complete revision of both family-sponsored and employment-based immigration to the United States, with an increased upper limit of immigrants who may enter the United States every year. Other provisions of this legislation modify certain existing nonimmigrant categories, create four new nonimmigrant categories, and provide for a new "diversity immigrant" category. In addition, it also provides for: temporary protected status for aliens from El Salvador and certain other countries in political turmoil; administrative naturalization; criminal aliens; employer sanctions; complete revision of exclusion and deportation grounds; marriage fraud; and favorable treatment for residents of Hong Kong.

Although there were different effective dates for different provisions of the Act of 1990, its major provisions came into effect on 1 October 1991. While some of the changes made by this law have been praised by practitioners, others are viewed as restrictive and troublesome. Among the latter are changes made in H-1B provisions for temporary nonimmigrant workers, a category used frequently when hiring college and university faculty. Positive features of this Act include an increased overall cap on immigration; early unification of members of immediate families (spouse and minor children of residents); and, more particularly, a nearly three-fold increase in the allocation of visas to employment-based immigrants.

A number of provisions in the Act of 1990 modify certain existing employment-related nonimmigrant categories, such as E, H, and L, and creates certain new nonimmigrant categories, such as O, P, Q, and R (see Chapters 6, 7, 8, and 11). A provision of significance and interest to foreign students advisers relates to off-campus work authorization for nonimmigrant F students during a pilot program that was recently extended until September 30, 1996.

There are now five different subcategories of H visa (H-1A for nurses, H-1B for aliens in "specialty" occupations, H-2A for temporary agricultural workers, H-2B for other temporary workers except foreign medical graduates, and H-3 for trainees). Certain artists, athletes, entertainers, and prominent people, formerly eligible for H-1 visa, are now separately covered by two new nonimmigrant visa categories "O" (aliens of extraordinary ability in the sciences, arts, education, business, or athletics), and "P" (internationally recognized athletes and entertainers).

For the first time, the new law imposes an annual cap of 65,000 on the number of nonimmigrant visas that can be issued to H-1B principal aliens; a cap of 66,000 exists for H-2B principal aliens. Within these upper limits, visas will be issued in the order in which petitions are filed for such visas or status. However, this numerical limitation does not apply to spouses and children of principal H-1B and H-2B aliens, nor to extensions granted.

The H-1B nonimmigrant category is substantially redefined. It is now available only to an alien who is coming temporarily to perform services in a "specialty occupation" as defined by the statute. Such aliens must meet certain requirements for the occupation, and their employers must comply with the new labor condition application process. The term "specialty occupation" requires: (1) theoretical and practical application of a body of highly specialized knowledge, and (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The law also states that the alien must have a full state licensure to practice an occupation if licensure is required to practice that occupation. With regard to the degree requirement, the alien must demonstrate completion of the degree or degree equivalency through experience, and recognition of expertise through progressively responsible positions relating to the specialty. See Chapter 10 for more on H visas.

The 1990 Act also requires a labor condition application, for purposes of H-1B status, under which the employer must file an application with the Secretary of Labor, stating that: (1) the employer offers and will continue to offer to aliens the greater of the actual wage level paid by the employer to other individuals with similar experience and qualifications for the specific employment in question at the place of employment, or the prevailing wage level for the occupational classification; (2) there is no strike or lockout at the place of employment; (3) the alien will be given similar working conditions as other employees; and (4) a notice of such filing is provided to a bargaining representative, or, if no such bargaining representative exists, it is posted in conspicuous locations at the place of employment. Such applications are also required to specify the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions of employment. The employer is also required to make available for public examination, within one working day, a copy of each such application and accompanying documents. The Labor Department is directed to establish a process for investigation and disposition of complaints, filed within 12 months, regarding failures or misrepresentations of an employer, and is invested with authority to impose civil monetary penalties including a fine not exceeding $1,000 per violation. If the violation pertains to nonpayment of certified wages, the Department of Labor may issue an order for payment of back pay as required.

The admission period of H-1B aliens is 6 years. The law gives, for the first time, a statutory recognition that the filing of a preference petition or adjustment of status application for or by an H-1 or L alien shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining or maintaining nonimmigrant H-1 or L status. Further, while section 214(b) of the Act generally raises a presumption for every alien to be an immigrant unless he can establish that he is indeed a nonimmigrant and is entitled to a nonimmigrant status, the new law excludes nonimmigrant H-1 and L aliens from such presumption and thereby relieves them from meeting the burden of establishing that they are not immigrants.

Lastly, with respect to H-1B and H-2B nonimmigrants, if such a nonimmigrant is dismissed from employment by the employer before the end of the period of authorized admission, the employer is responsible for the reasonable costs of return transportation abroad.

With regard to H-3 trainees, the 1990 Act now explicitly requires that the training program is not one "designed primarily to provide productive employment." However, this does not represent a new requirement, for the current administrative case law consistently requires the petitioner to demonstrate that the training program is not one designed primarily to provide productive employment.

Besides the two new nonimmigrant categories ("O" for aliens with extraordinary ability in the sciences, arts, education, business, or athletics, shown by sustained national or international acclaim; and "P" for certain athletes and entertainers, to perform at an internationally recognized level of performance), the 1990 Act provides for a new nonimmigrant category (Q) for participants in international cultural exchange programs. Under this provision, an alien who is coming as a participant in an international cultural exchange program designated by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien's country, qualifies for Q nonimmigrant classification, provided that the alien will be employed under the same wages and working conditions as domestic workers. The period of authorized status as a Q nonimmigrant cannot exceed 15 months.

Another nonimmigrant category created by the 1990 Act is for certain religious workers (R). For a detailed discussion of nonimmigrant R status, see Chapter 11.

Lastly, the 1990 Act provides for two other minor nonimmigrant provisions: The first is for the admission of nonimmigrants to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense, with a numerical limitation of a total of 100 such admissions at any time. The second provides for admission of nonimmigrants to participate in a special education training program for practical training and experience in the education of children with physical, mental, or emotional disabilities, with a numerical limitation of a total of 50 such admissions in any fiscal year.

In light of these profound legislative changes, all three involved agencies or departments (INS, DOS, and DOL) have drafted and revised their relevant regulations to implement the legislative mandates, which became operational on 1 October 1991. The Department of Labor, however, is now seeking to further revise the statutory provisions of the Immigration Act of 1990 in an effort to make the regulations more restrictive.

INS is consistently making efforts to alleviate certain problems affecting academic and other institutions by working closely with NAFSA: Association of International Educators, and other active national organizations such as AILA (American Immigration Lawyers Association) in periodic reevaluation of existing regulations.

1.9 NOTE OF CAUTION

Advisers to foreign students and scholars are responsible for staying abreast of statutory and regulatory changes that may affect those whom they advise in the performance of their official duties. Advisers are also responsible for carrying out their duties in a thorough and professional manner, not only to prevent their advisees from being inadvertently misled but also to provide them with information they need to remain in compliance with laws and regulations.

It should also be noted that it is clearly not the responsibility of advisers to enforce the laws and regulations or to make reports to government agencies beyond what is required for any particular class or classes of nonimmigrants. For example, it is not the adviser's responsibility to report to the INS any students who may have been engaged in unauthorized activity, except when specifically required to do so by regulations. To do so would destroy the trust and working relationship with the aliens, jeopardize the adviser's role as the representative and employee of the college or university, and improperly and incorrectly suggest that the adviser is an agent of the government.

With such profound statutory and regulatory changes, the challenge to serve foreign students and scholars and to keep them properly informed of U.S. laws and regulations has significantly increased. It is further compounded by the fact that the four involved departments (INS, State, USIA, and DOL) quite frequently issue advisory memoranda and letters, which explain or clarify the statutory and regulatory provisions.

It is imperative that all professionals in the field of international educational exchange possess thorough information about all aspects of relevant laws and regulations and periodically reexamine the ways in which they communicate information to the students and scholars who depend on them for guidance. Only in this way will they be able to maintain an approach that will encourage foreign students and scholars to use their services and rely on their advice.

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SECTION 2

The Legal Status of Nonimmigrants in the United States

Marjory Gooding

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I-151	Alien Registration Receipt Card (issued before 1979)
I-186	Border Crossing Card
I-551	Alien Registration Receipt Card
I-586	Border Crossing Card
I-688	Temporary Resident Card
I-688A	Employment Authorization Card
CI	Certificate of Identity
AR-11	Address Report Card
OF-156	Application for Nonimmigrant Visa

2.1 NONIMMIGRANT CLASSES

A nonimmigrant is any alien coming to the United States for a temporary stay that will end when its purpose has been accomplished.

Nonimmigrant visas are issued in accordance with provisions of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended (the Act). Most students receive F-1 visas and enter the United States in F-1 status if they will pursue a full course of study in an academic institution or engage in language training. They are given M-1 status if they are entering to pursue a full course of study at an established vocational or other recognized nonacademic institution. Some are in J-1 (exchange visitor) status. A few may also hold other classifications (sometimes as dependents), such as diplomat (A), temporary worker (H), treaty trader/investor (E), or international organization employee (G). Foreign scholars (professors, researchers) are usually in J-1 or H-1B status; occasionally they may have O-1 status.

The *Manual* contains sections on each of the nonimmigrant classifications most frequently encountered in the field of international educational exchange, namely, F students (Section 4), M students (Section 5), J exchange visitors (Section 9), and H temporary workers or trainees (Section 10). (Section 12 gives brief information about other nonimmigrant classes.)

The Act, as amended, designates the nonimmigrant classes listed below. The different classes of nonimmigrants are known by the subletter of the immigration law concerning their class. For example, section 101(a)(15)(F)(i) of the Act, as amended, is the full reference for what is commonly called the F-1 student.

2.2 PASSPORTS

2.2.1 Definition

A passport is defined in the Act as "any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for entry of the bearer into a foreign country." [Act 101(a)(30)] In this context, a passport may encompass documents other than those traditionally thought of as a passport, and may in fact be a set of documents such as a Certificate of Identity and a reentry permit for the country issuing the documents. A passport permits its bearer to return to the issuing country, usually the country of the bearer's nationality. Occasionally a person may consider himself or herself "stateless" and carry documents or a passport issued by the country in which he or she resides.

2.2.2 Travel documents in lieu of passport

Some aliens will have travel documents other than passports. The most common document is a Certificate of Identity (CI), sometimes held by Hong Kong students who are not British subjects. The bearer of a CI is usually a person who is not a citizen of the foreign state issuing the CI, but is a resident of that state who, for some reason, cannot or will not obtain a travel document from the state of citizenship. As another example, individuals who are refugees may hold refugee travel documents issued by countries signatory to the United Nations Convention Relating to the Status of Refugees. In this volume, the term "passport" encompasses travel documents used in lieu of passports.

2.2.3 Validity of passports

A passport shows the date of its issuance and the date to which it is valid (its expiration date). The period of validity of a passport varies according to the regulations and procedures of the issuing country, and may range from 1 year to several years.

2.2.4 Passport requirements

Most aliens seeking admission to the United States must have a valid, unexpired passport. The most common exceptions are:

1. Canadian nationals who are entering the United States from the Western Hemisphere.

2. Mexican nationals who seek to enter the United States as B1/B2 visitors and who are in possession of a Border Crossing Card. Border Crossing Cards were formerly issued in the form of a laminated card (Form I-186 or I-586). These are still valid if the card has not been voided. Currently, Border Crossing Cards are issued in the form of a stamp in a Mexican passport or on a Mexican identity document [*Foreign Affairs Manual*, Vol. 9, Sec. 41.32]

There are a variety of other exceptions. Advisers who deal with citizens of the Federated States of Micronesia; citizens of the Republic of the Marshall Islands; British subjects who reside in Bermuda, the Bahamas, or Canada; or citizens of Commonwealth Countries who reside in Canada or Bermuda should consult 8 CFR 212.1 (a) through (d).

The requirements for valid visas are covered in the section 2.3.

There is considerable ambiguity between the language of the statute and the language of the regulations regarding the continuous necessity for a valid passport for nonimmigrants. [Compare INA 212 (a) (7) (B) (i) with 8 CFR 214.1 (a).] The safest position for advisers is to encourage their students and scholars to maintain the validity of their passports throughout their stay in the United States. It is clear that nonimmigrants (with the exceptions noted above) need to have valid passports when they enter the United States and when they apply for a benefit which involves an extension of stay. Less clear is the necessity for an F-1 student to have a valid passport when he/she applies for a benefit like curricular practical training, which does not involve an extension of stay. Advisers might want to encourage their students or scholars to seek extension of their passport

Nonimmigrants

Visa Symbol	Class	Section of Law
A-1	Ambassador, public minister, career diplomat or consular officer, and members of immediate family	101(a)(15)(A)(i)
A-2	Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii)
A-3	Attendant, servant, or personal employee of alien classified A-1 or A-2, and members of immediate family	101(a)(15)(A)(iii)
B-1	Temporary visitor for business	101(a)(15)(B)
B-2	Temporary visitor for pleasure	101(a)(15)(B)
C-1	Alien in transit	101(a)(15)(C)
C-2	Alien in transit to United Nations headquarters district under Section 11 (3), (4), or (5) of headquarters agreement	101(a)(15)(C)
C-3	Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8)
D	Crewman (seaman or airman)	101(a)(15)(D)
E-1	Treaty trader, spouse, and children	101(a)(15)(E)(i)
E-2	Treaty investor, spouse, and children	101(a)(15)(E)(ii)
F-1	Student in academic or language program	101(a)(15)(F)(i)
F-2	Spouse or child of student in academic or language program	101(a)(15)(F)(ii)
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and members of immediate family	101(a)(15)(G)(i)
G-2	Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii)
G-3	Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii)
G-4	International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv)
G-5	Attendant, servant, or personal employee of alien classified G-1, G-2, G-3, or G-4, and members of immediate family	101(a)(15)(G)(v)
H-1A	Temporary worker performing professional nursing services	101(a)(15)(H)(i)(a)
H-1B	Temporary worker in a specialty occupation	101(a)(15)(H)(i)(b)
H-2A	Temporary agricultural worker	101(a)(15)(H)(ii)(a)
H-2B	Temporary worker performing nonagricultural services unavailable in the United States	101(a)(15)(H)(ii)(b)
H-3	Trainee	101(a)(15)(H)(iii)
H-4	Spouse or child of alien classified H-1, H-2, or H-3	101(a)(15)(H)(iv)
I	Representative of foreign information media, spouse, and children	101(a)(15)(I)
J-1	Exchange visitor	101(a)(15)(J)

J-2	Spouse or child of exchange visitor	101(a)(15)(J)
K-1	Fiancée or fiancé of U.S. citizen	101(a)(15)(K)
K-2	Child of fiancée or fiancé of U.S. citizen	101(a)(15)(K)
L-1	Intracompany transferee	101(a)(15)(L)
L-2	Spouse or child of alien classified L-1	101(a)(15)(L)
M-1	Student in vocational or other recognized nonacademic institution	101(a)(15)(M)(i)
M-2	Spouse or child of student in vocational or other recognized nonacademic institution	101(a)(15)(M)(ii)
N-8	Parent of an alien child accorded special immigrant status	101(a)(15)(N)
N-9	Child of an alien parent accorded special immigrant status	101(a)(15)(N)
NATO 1-7	Includes the principal permanent representative of a NATO state; other representatives of member states; official clerical staff; officials of NATO; experts; members of a civilian component accompanying a force; attendants, servants, or personal employees of NATO visa holders; and members of immediate family of the above.	Various treaty articles
O-1	Workers of "extraordinary" ability in the sciences, arts, education, business, or athletics	101(a)(15)(O)
O-2	Workers who accompany and assist O-1 aliens	101(a)(15)(O)(ii)
O-3	Family members of O-1 and O-2 aliens	101(a)(15)(O)(iii)
P-1	"Internationally recognized" entertainers and athletes	101(a)(15)(P)(i)
P-2	"Reciprocal exchange" artists and entertainers	101(a)(15)(P)(ii)
P-3	"Culturally unique" artists and entertainers	101(a)(15)(P)(iii)
P-4	Family members of P-1, P-2, or P-3 aliens	101(a)(15)(P)(iv)
Q	Cultural Exchange Visitors	101(a)(15)(Q)
R	Religious Workers	101(a)(15)(R)
S	Federal Witnesses	101(a)(15)(S)
TN	Professionals from Canada or Mexico who enter the United States under the NAFTA agreements	214 (e)
TD	Dependents of TN professionals	214 (e)

For further information, see Section 12, "Other Nonimmigrant Classes" validity in preparation for application for such a benefit. It is clear from the regulatory language that it is the responsibility of the alien (not the adviser) to maintain passport validity.

The countries listed in Appendix 9 have agreements with the United States whereby their passports are recognized as valid for return to the issuing country for a period of 6 months beyond the expiration date specified in the passport. Public Notice 443 of the Bureau of Consular Affairs published in the *Federal Register* on June 4, 1992 contains language which might be construed to mean that the passports of these nationals are considered to be valid for 6 months beyond the expiration date for purposes other than return home. The notice says, "These arrangements have the effect of extending the validity period of the foreign passport an additional 6 months notwithstanding the expiration date indicated in the passport." Advisers may wish to read this part of the public notice very conservatively and encourage students and scholars to apply for passport extension before the expiration date on their passports, even if the individual is from a country which has a passport validity agreement with the United States. This would serve to protect students and scholars from any situations where this provision might be questioned.

2.2.5 Revalidation or reissuance of a foreign passport

Foreign passports may be revalidated or reissued in the United States by the designated representatives of foreign governments, usually officials of the consular section of the government's embassy in Washington, D.C., or officials of the consulates located in various U.S. cities. A foreign student or scholar who needs to renew a passport should consult his or her embassy or consulate to determine what procedures are required. It is wise for foreign nationals to apply as far in advance as allowed by the home government in order to ensure a timely extension (see Section 2.3.5 for information about the validity of unexpired visas in expired passports).

2.3 VISAS

2.3.1 Definition

A visa to enter the United States as a nonimmigrant is a stamped or affixed entry on a page of the passport. It enables the passport bearer to request the immigration officer at the port of entry to grant admission to the United States under conditions specified for the type of visa the bearer holds.

The nonimmigrant visa stamp shown in the samples reproduced in Appendix 4 contains the following information: the visa number; the location of the issuing office; the visa classification; the date of issuance; the expiration date or the word "indefinitely" if, on the basis of reciprocity with the bearer's home government, a visa with indefinite validity is issued; the number of applications for admission to the United States for which it is valid, or the word "multiple" in cases where an indefinite number of applications for admission are allowed during the visa's period of validity; usually the name(s) of the person(s) to whom issued; and the signature or facsimile signature of the issuing officer. [22 CFR 41.113(d)]

Students and others often confuse the term "visa," which gives a person permission to apply for entry to the United States, and the terms "Arrival/Departure Record," "I-94," "authorized stay," or "permission to stay." The latter terms refer to a person's permission to remain in the United States after having entered (see Section 2.4). A person's visa need not remain valid once he or she has used it to gain admission to the United States. The permission to stay, by contrast, must be kept valid.

Confusion also surrounds the terms "visa" and "status," or "classification." The visa is stamped in the alien's passport and is used for entering the United States; the alien is said to be in a particular immigration status, or classification, once in the United States. The type of visa stamped in the passport, however, may not be the same as the status in which the alien is in the United States. An alien may enter the country with one type of visa (e.g., B-2 visitor-prospective student) and subsequently have his or her status changed, perhaps to that of an F-1 student. This change will be noted on the Form I-94, or replacement I-94 attached to Form I-797, of the alien, who will then be in F-1 status even though the visa stamped in the passport is a B-2 visa. This individual will have one type of visa and a different type of status. To reenter the United States in F-1 status (with certain exceptions), this person would have to apply for an F-1 visa at a U.S. embassy or consulate abroad (see Sections 2.2.4 and 2.3.2).

Similarly, a person may have more than one valid visa stamp in the passport. For example, a student or scholar with a valid F-1 or J-1 stamp may also have a valid B-1 or B-2 stamp. The person's status in the United States will be that assigned by the immigration officer at the port of entry and entered on the I-94, Arrival/Departure Record. To prevent admission in the wrong classification, it is important that the student or scholar present proper visa documents (an I-20 or IAP-66 in the case of F or J class) and properly and clearly indicate to the immigration officer the purpose of the intended stay in the United States. Otherwise, the student or scholar may be admitted in a visa class that will prevent him or her from engaging in certain activities, such as on-campus employment, until a change of status can be obtained from INS, a process that may take several weeks or months.

2.3.2 Visa requirements

With certain exceptions, all aliens applying for admission to the United States must hold valid visas.

The exceptions to this requirement are generally the same as the exceptions to the passport requirements (see Section 2.2.4). Note, however, that Canadian nationals, among others, who are entering the United States from outside the Western Hemisphere must have a passport but not a visa. [8 CFR 212.1(a) and 22 CFR 41.2]

Certain aliens applying for admission to the United States as visitors (for business or pleasure) can enter without visas under the Visa Waiver Program. To be eligible, the alien must be a citizen of a country designated as a participant in the Visa Waiver Program, must intend to remain in the United States for fewer than 90 days, must have a valid passport and a nontransferable, nonrefundable (except under specific circumstances) round-trip ticket, and must meet other criteria set forth in 8 CFR 217.2(a). Aliens admitted under the Visa Waiver Program are not eligible for extension of stay, change of nonimmigrant status, or with few exceptions adjustment of status to that of a permanent resident. [8 CFR 217] At this writing, the list of countries designated as participants in the Visa Waiver Program included Andorra, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, San Marino, Spain, Sweden, Switzerland, and the United Kingdom. The Immigration Act of 1990 allows the Secretary of State and the Attorney General to expand this program to other countries (see Section 12.2.2.6). [Act 201; *Federal Register*, 30 August 1991]

If an alien who is maintaining nonimmigrant status returns to the United States after an absence not exceeding 30 days in contiguous territory (Canada or Mexico), his or her visa is considered to be extended automatically to the date of reentry if certain conditions are met. For aliens in F or J status, this automatic extension also extends to trips of 30 days or less to adjacent islands other than Cuba. The Act defines such "adjacent islands" as Saint Pierre, Miquelon, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territories or possessions in or bordering on the Caribbean Sea. [Act 101(b)(5)] Sections 4.11, 5.11, 9, 10, and 12.4 provide detailed explanations of this provision as it applies to the various nonimmigrant classifications. [8 CFR 214.2(b) and 22 CFR 41.112(d)]

2.3.3 Requirements for obtaining a visa

Application for a nonimmigrant visa usually requires a personal appearance before the consular officer assigned to the applicant's consular district, completion of Form OF-156 (Application for Nonimmigrant Visa), and the provision of other documents that the consular officer may require in order to be satisfied that the applicant is eligible for the nonimmigrant visa for which he or she is applying. These other documents include the appropriate Certificate of Eligibility (Form I-20A-B, Form I-20M-N, or Form IAP-66) for student or exchange-visitor applicants, notice of an approved petition (Form I-797) for temporary-worker or trainee applicants, and other documents for applicants for other types of visas.

Required documents might also include evidence of adequate financial resources, evidence of competence in English, evidence of educational attainments, photographs, and police certificates. [22 CFR 41.101-41, 108]

A foreign national applying for a nonimmigrant visa may be charged a fee. The size of the fee, the length of the visa's validity, and the number of applications for admission are all determined "as nearly as practicable" on the basis of reciprocity. That is, the United States will try to match the treatment given U.S. citizens applying for visas to the alien's country (see Section 12). [Act 221(c); 22 CFR 41.107(a) and 41.112(b)]

2.3.4 Function of consular officers

According to federal regulations, "an applicant for a nonimmigrant visa shall be presumed to be an immigrant until the consular officer is satisfied that the applicant is entitled to a nonimmigrant status.... The burden of proof is upon the applicant to establish entitlement for nonimmigrant status and the type of nonimmigrant visa for which application is made." [22 CFR 41.11]

Thus, the consular officer has discretion to require whatever evidence is necessary to demonstrate that an applicant for a nonimmigrant visa is eligible for such a visa. Consuls operate under guidelines furnished by the Visa Office of the Department of State, but they retain discretionary authority in determining the facts of a given case.

If a consul has reason to believe that a visa applicant is not a bona fide nonimmigrant, the visa application may be denied. The most common reason for denying a visa is that the consular officer is not convinced that the applicant has a residence in a foreign country that he or she has no intention of abandoning. In such a case, the applicant may attempt to convince the consul that there is both need and reason to return to the foreign residence. This can be done in a variety of ways, such as showing evidence of a job offer or a job to which to return, proving ownership of property, or explaining family ties and responsibilities.

School officials who believe a consul is making unreasonable requirements of a specific visa applicant can contact the consul and request reconsideration of the application. A school official also can furnish details of the situation to the Department of State, Visa Office, Public Inquiries Division, and request that division to ensure that the consul is following established guidelines. While the Visa Office has no formal authority to override the decision of a consular officer who is legitimately exercising discretion, a Visa Office inquiry to a consular officer can clarify the reasons for a decision. There is no formal appeal from a consul's denial of a visa application (see Section 14.3.2.1).

2.3.5 Unexpired visa in expired passport

The *Foreign Affairs Manual* provides the answer to a quandary that a foreign national occasionally faces:

> The expiration of the passport in which a visa has been issued has no effect on the validity of the visa. However, the holder of a valid visa should be informed of the need for a passport at the time of admission to the United States. The passport may be either the passport in which the visa stamp is placed or a new passport. Thus, a nonimmigrant can fulfill the visa and passport requirements by presenting two documents, one of which fulfills the visa requirement and the other the passport requirement, provided the alien's nationality as indicated in the new passport is the same as shown in the passport bearing the visa stamp. [*FAM*, Vol. 9, Sec. 41.112, N3.3]

2.4 FORM I-94 (ARRIVAL/DEPARTURE RECORD)

2.4.1 General

Every alien entering the United States temporarily (with a few exceptions, such as Canadians in B status and, under certain circumstances, Mexican nationals holding Border Crossing Cards) is issued a Form I-94 (a sample Form I-94 is reproduced in Appendix 3). When the alien enters the United States, the Arrival Record portion of the form is detached and kept by INS. The Departure Record is usually stapled into the alien's passport on the same page on which the visa has been stamped.

Form I-94 shows the alien's immigration classification and endorsements made by immigration officers to indicate the place and date of the alien's admission to the United States and the initial period of stay authorized. (See Section 2.3.1 for discussion of permission to stay.) If the alien is classified as other than an F-1 or M-1 student, the Form I-94, or replacement I-94 attached to Form I-797, also shows any authorized extension of stay, any change of nonimmigrant classification, and some other INS actions affecting the alien. Some actions taken by INS for F-1 and M-1 students are also recorded on Form I-20 ID (see Sections 3, 4, and 5).

2.4.2 Replacement of a lost Form I-94

To replace a Form I-94 that has been lost or mutilated, an alien applies to INS on Form I-102 (see Appendix 1). If a photocopy of the lost Form I-94 or a copy of the passport page showing the date of last entry can be submitted with Form I-102, processing time may be greatly reduced. INS should not charge for the replacement if it lost the form. An adviser may advise foreign nationals to retain a photocopy of Form I-94 and Form I-20 ID Copy (the yellow card used between 1984 and 1 July 1988) or Form I-20 ID (Student) Copy (as used after 1 July 1988). Designated school officials are now required to retain a photocopy of the Form I-20 ID) as part of required record keeping for F-1 and M-1 students.

2.5 ALIEN REGISTRATION AND ADDRESS REPORT

2.5.1 Registration

All aliens admitted to the United States must be registered for immigration purposes. Initial registration is effected when the alien applies for a visa. [Act 221(a) and (b), 261, 262, and 264] Form I-94, the Arrival/Departure Record, serves as the registration form for aliens admitted as nonimmigrants. [8 CFR 264.1(a)]

Until 1970 INS assigned an alien registration number to all immigrants and to nonimmigrants admitted to the United States as F-1 students and J-1 exchange visitors. The alien registration number begins with the letter "A" followed by eight digits. Alien registration numbers are no longer routinely assigned to nonimmigrants. They may be assigned in cases involving nonroutine applications, nonimmigrants under proceedings, and other unusual circumstances. In addition, INS service centers may assign "A" numbers to F or J students or scholars for record-keeping or computer-access purposes. Most foreign students and exchange visitors now in the United States do not have alien registration numbers.

Form I-551 (or Form I-151, issued before 1979), the Alien Registration Receipt Card, commonly known as the "green card," is the registration form for aliens admitted as immigrants or who become immigrants through adjustment of status. It is a rectangular, laminated card, in green, blue, salmon, or white, showing the alien's photograph and time and place of admission as an immigrant (see Section 13.9). [8 CFR 264.1(b)]

Alien spouses of U.S. citizens or lawful permanent residents who have been granted permanent residence based on marriage to a U.S. citizen or resident are issued the Conditional Resident Alien Card I-551. This is the same card issued to permanent-resident aliens described above, but is valid for a limited period of time. The expiration date is on the back of the card but is automatically renewable like a U.S. passport.

Aliens granted temporary-resident status under the legalization or agricultural workers programs are issued the Temporary Resident Card, I-688. It is valid until the expiration date shown on the face of the card. Temporary residents who have already been interviewed for legalization or for the agricultural workers program are issued the Employment Authorization Card, I-688A. It is valid for 6 months and shows the expiration date on its face.

2.5.2 Address reports

Immigrant and nonimmigrant aliens living in the United States are required to report to INS any change of address within 10 days of that change. Aliens can use

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Form AR-11, which should be available at post offices and INS offices, but which is frequently out of stock and not available. [8 CFR 265.1]

2.6 EXTENSION OF TEMPORARY STAY

Upon their initial admission to the United States, most nonimmigrants receive permission to stay in the country for a specific period of time. Nonimmigrants who wish to remain in the United States beyond that period must, if eligible to do so, apply for extension of their permission to stay. The procedure for applying for extension of stay varies according to nonimmigrant classification. (For further discussion of those procedures, refer to sections dealing with specific classifications.)

Certain nonimmigrants, such as those in A and G status (except A-3 and G-5), do not have specific limitations on their periods of stay in the United States. Aliens in F or J status are admitted to the United States for the period of time appropriate to their program. Their I-94 cards are marked "D/S," which means "duration of status." With this notation on the Form I-94, aliens can remain in the United States as long as they are engaged in the activity for which they were admitted and as long as they have appropriately dated enabling documentation (I-20 for F students and IAP-66 for J exchange visitors). For further discussion of duration of status as it applies to aliens in F or J status, see Sections 4 and 9.

2.7 CHANGE OF CLASSIFICATION

In some cases, it is possible to change from one nonimmigrant classification to another. For details, see Section 4 for F status, Section 5 for M status, Section 9 for J status, Section 10 for H status, and Section 12 for other nonimmigrant classifications.

2.8 VOLUNTARY DEPARTURE

Voluntary departure is the permission granted at the discretion of INS for an alien to depart voluntarily from the United States at his or her own expense in lieu of deportation. [Act 242(B); 8 CFR 242.5] It is a means by which a person may avoid some of the negative consequences of deportation by leaving the United States voluntarily prior to the deadline set by INS. If voluntary departure has been granted, the alien's Form I-94 will be endorsed "voluntary departure" or "V/D," with the date by which the departure is supposed to take place. The Form I-94 might also be stamped "under docket control," referring to an INS procedure whereby an alien's status is monitored to ensure compliance with terms established by INS.

Voluntary departure is granted in various circumstances, including cases in which a nonimmigrant student found to have violated the terms of student status is permitted to remain in the United States to complete an academic term. Occasionally a nonimmigrant who needs additional time in the United States can secure permission to stay for an additional 30 days from the district office of the INS. This sort of permission is called "satisfactory departure" and is available in circumstances beyond the alien's control or other special circumstances (see Section 12.3.3). [8 CFR 214.1(c)(5)]

In the past, voluntary departure could be authorized for extended periods of time to a person who was unable to return home because of serious political or natural upheavals, but who was unable to maintain lawful nonimmigrant status. This was referred to as "extended voluntary departure" (EVD). In circumstances of national disaster or unrest, the attorney general and the secretary of state decided to allow citizens of a particular country to stay in the United States after their nonimmigrant status had expired. In past years, citizens of Afghanistan, Ethiopia, and Poland were allowed to remain in the United States, subject to review, until the situation in their respective homelands improved. Advisers may occasionally see the notation "extended voluntary departure" in such passports. This category, however, has been eclipsed more recently by the concept of "temporary protected status" (TPS), which serves much the same purpose in a more regularized manner. [Act 244A] Advisers should be aware that these categories overlap. The attorney general has, in the past, designated nationals of El Salvador, Kuwait, Lebanon, Liberia, Somalia, Burundi, and Rwanda for TPS. These designations have various expiration dates. Advisers should consult with NAFSA for information on expiration of TPS for particular nationals.

The category of some interest to advisers of foreign students and scholars is the designation "deferral of enforced departure." This is a term that was used to refer to the special status created for nationals of the People's Republic of China (PRC) in the wake of the incidents in Tiananmen Square in 1989 and President Bush's Executive Order of 11 April 1990. This status expired on 1 January 1994. Advisers may occasionally encounter students or scholars who are still working through legal problems which have spun off from this status. Advisers should be aware that the provisions of deferral of enforced departure are very different from those of other forms of delayed departure.

2.9 DEPARTURE

Ordinarily, an alien who is issued a Form I-94 notifies INS of his or her departure from the United States by surrendering the Form I-94, Departure Record, at the point of departure. Officials of the transportation line are responsible for gathering the departure portion of the Form I-94 and presenting it with the departure manifest to the immigration authorities. Canadian immigration officers inspect Forms I-94 at Canadian land-border ports of exit, and U.S. immigration officers inspect them at Mexican land-border ports of exit. If for some reason a departing nonimmigrant is not in possession of a Form I-94, a duplicate departure notice is provided. The Forms I-94 are the permanent record of entry and departure. An alien under docket control is also provided with a postcard for notifying INS of the departure.

2.10 TAX CLEARANCE

Departing aliens, with certain exceptions, are formally required by the Internal Revenue Service (IRS) to obtain a Certificate of Compliance, or Sailing Permit, before departure from the United States. The Sailing Permit is evidence that the alien has paid whatever taxes may be due the U.S. government. In regulations that became effective for travel after 28 January 1991 and recently finalized, the IRS exempted F-1, F-2, H-3, H-4, J-1, J-2, and in some cases M-1 and M-2 visa holders from the requirement that they obtain a Sailing Permit. In order to be exempt from obtaining the Sailing Permit, F-1, F-2, H-3, H-4, J-1, and J-2 aliens must have received no income from U.S. sources other than that received: (1) as allowances to cover expenses incident to study in the United States (including expenses for travel, maintenance, and tuition); (2) as allowances to cover services and accommodations incident to study in the United States; and (3) in accordance with the employment authorization regulations applying to the alien's visa. In order to qualify for this exemption, M-1 and M-2 visa holders can have received no income except that which was received in accordance with employment authorization regulations applying to their visa category. [26 CFR 1.6851-2T (2) (ii) *Federal Register*, 3 March 1994, p. 10066]

SECTION 3

Responsibilities of Institutions Enrolling F-1 or M-1 Students

Marjory Gooding

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M-242	Student and Schools Regulations

3.1 GENERAL

Federal regulations put into effect in 1987 and 1991 place significant responsibilities on students and schools in the administration of U.S. laws and regulations pertaining to F-1 and M-1 students. Advisers are constantly involved in a balancing act between government regulations and the welfare of their students and programs.

The regulations and the INS internal guidelines known as Operations Instructions (OIs) require schools and their designated officials (DSOs) to follow specific record-keeping and reporting requirements, effectively involving the schools as coadministrators with INS. Although these regulations seek to control abuses by mala fide schools, they also thrust bona fide schools and their officials into an arena that somewhat alters their professional roles as educators, counselors, advisers, and helpers of foreign students. It is critical for schools and school officials to comply with these regulations as counselor/educators rather than as policing agents. This approach will ensure that neither individual students nor their respective institutions are placed in legal jeopardy. Yet it will also enable schools to adhere to the principles that govern professional and institutional responsibilities to the students in their charge. Some of these issues and the legal, ethical, and educational questions they raise are discussed further throughout this section.

The following material incorporates the regulations and procedures set forth in the *Code of Federal Regulations* and the OIs, as well as ideas from the NAFSA Code of Ethics (1992).

3.2 APPROVAL OF SCHOOLS FOR ACCEPTANCE OF F-1 AND/OR M-1 STUDENTS

A school wishing to enroll nonimmigrant students under the provisions of sections 101(a)(15)(F) and/or 101(a)(15)(M) of the Immigration and Nationality Act (the Act) must apply to INS for approval. The purposes of the application and approval process are to ensure that the school is a legitimate educational institution, that it provides instruction suitable to the needs of foreign students, and that it is able to and will act responsibly and in accordance with the immigration regulations in admitting foreign students, in maintaining records, and in submitting the reports required by INS to monitor the status of foreign students.

3.2.1 Application for school approval

On 14 January 1994 the Immigration and Naturalization Service issued a memorandum that provides a revision of the school approval policy and procedures. This memorandum supersedes all previously issued guidelines with regard to application for school approval. The basic rules for application for school approval are found in 8 CFR 214.3, but schools thinking of making such an application would be well served to take a close look at this memorandum that provides detailed information. This memorandum is reproduced in *Interpreter Releases*, 14 March 1994.

The initial application, or petition, for school approval consists of Forms I-17 (reproduced in Appendix 3) and I-17A, a fee (see Appendix 1), and supporting documents. If the petition is for a school system, Form I-17B must be submitted. The application is filed with the INS district office having jurisdiction over the place in which the school is located. (A school system that has schools or campuses in 2 or more INS districts must file separate petitions for its schools or campuses in each INS district.)

In the process of making such an application, schools are asked to produce significant supporting documentation. INS may request an interview in certain cases, particularly if the petitioning institution is neither publicly owned and operated, nor accredited, nor owned and operated by an accredited institution. Language schools should pay particular attention to this section of the requirements since a language school in a state which does not license or approve such programs because it considers them to be avocational or recreational must be accredited by a nationally recognized accrediting agency. As of September 1994, only the Accrediting

Council for Continuing Education and Training is so recognized. (This issue is currently being debated within the language school community and may be resolved in the near future.) Petitions for school approval must also include a statement signed by each designated school official (DSO) affirming that the official has read the regulations relating to nonimmigrant students and intends to comply with those regulations. For more information on designated school officials, see Section 3.3.1.

3.2.1.1 Approval of petition

The application, supporting documents, and other requirements are designed to determine whether the school is eligible for approval to enroll nonimmigrant students. To be eligible for approval, the school must establish that "(i) it is a bona fide school; (ii) it is an established institution of learning or other recognized place of study; (iii) it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and (iv) it is, in fact, engaged in instruction in those courses." [8 CFR 214.3(e)(1)] If the petition is approved, the district director will notify the school on Form I-516 with a copy of I-17A attached. If a program (or school or campus part thereof) is not approved, the approval notice must indicate that the program is not approved. The approval will specify whether the school is approved for attendance by F-1 students, M-1 students, or both. The approval is valid only as long as the school continues to operate in the manner described in the petition. [8 CFR 214.3(e)(2)] Updates, changes, or corrections in DSOs, ownership, type of student enrolled, schools or campuses, address, or school term must be reported. [Memorandum, James Puleo, 14 January 1994, *Interpreter Releases*, 14 March 1994]

3.2.1.1.1 Approval for F-1 classification. The regulations state that the following kinds of schools may be approved for attendance by F-1 students:

> (A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's, doctor's or professional degrees. (B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees. (C) A seminary. (D) A conservatory. (E) An academic high school. (F) An elementary school. (G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines. [8 CFR 214.3(a)(2)(i)]

3.2.1.1.2 Approval for M-1 classification. The following kinds of schools are considered to be vocational or nonacademic institutions and may be approved for attendance by M-1 students:

> (A) A community college or junior college which provides vocational or technical training and which awards recognized associate degrees. (B) A vocational high school. (C) A school which provides vocational or nonacademic training other than language training. [8 CFR 214.3(a)(2)(ii)]

"A student whose primary intent is to pursue vocational or technical training who takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study" is classified as an M-1 student. [8 CFR 214.3(a)(2)(iv)]

3.2.1.1.3 Approval for both F-1 and M-1 classifications. Schools that provide instruction in the liberal arts, fine arts, language, religion, the professions, and in vocational or technical subjects may be approved to enroll both F-1 and M-1 students. Students who enroll in academic or language programs are classified as F-1 and are issued Form I-20A-B; students who enroll in vocational or technical training programs are classified M-1 and are issued Form I-20M-N. [8 CFR 214.3(a)(2)(iii)]

3.2.1.2 School code number and suffix

Upon initial approval to accept nonimmigrant students, each school is given a school code consisting of three letters identifying its INS district office, the designation "214F," and a four-digit number identifying the individual school or school system. Thus, an approved school in the Boston district might have the school code number "BOS 214F.0123."

INS also assigns permanent, consecutive numbers to all schools within each school system, other than those in elementary or secondary school systems. That is, campus number one is assigned the suffix ".001," campus number two ".002," and so on for the number of campuses or separately approved schools or programs within that school system. A school that is not a part of a school system is automatically assigned the suffix ".000." The same is true of an elementary or secondary school regardless of whether it is part of a school system. The Boston-area school cited above will have the complete school code number "BOS 214F.0123.000" if it is not part of a school system; if it is campus or school number one in a multicampus system having a single school code number, its complete number will be "BOS 214F.0123.001." [8 CFR 214.2 (f)(13)] An English-language program operated by a college or university and separate teaching institutions within a single campus, except at the elementary or secondary level, may qualify as schools within a school system. [OI 8 CFR 214.3(c)]

The complete school code number and suffix must be placed on all Forms I-20A-B and I-20M-N and on any other documents used to identify the school under INS's computerized record-keeping system.

3.2.2 One-time recertification process

The 1983 regulations provided for a one-time recertification of schools previously approved for attendance by F-1 and/or M-1 students "to enable the Service to update its records and review the approval of each school desiring to continue its approval, to determine whether it meets the eligibility requirements ... and has complied with the reporting requirements." [8 CFR 214.3(h)(2)(D)(ii)] This process allowed INS to withdraw school approval from institutions not in compliance with the regulations and, at the same time, to update its list of approved schools. As a result of the one-time recertification process, school approval may have been continued, withdrawn automatically, or proceedings may have been instituted to withdraw approval on notice. Although the INS does not have plans at present to repeat this one-time recertification process, it reserves the right to do so in the future.

3.2.3 Regular review of school approvals

The district director of the INS may periodically review the approval of a school in his or her jurisdiction for compliance with reporting requirements (see Section 3.5) and to determine whether the school continues to meet the basic eligibility requirements. The district director reviews whether a change in the name, address, or curriculum of an approved school might affect the school's eligibility for continued approval. The district director may require the school under review to furnish a currently executed Form I-17 without fee, along with supporting documents, if there is a question about continued eligibility. [8 CFR 214.3 (h)] It is clear that practice varies from INS district to INS district. Advisers will want to stay in close touch with their INS school liaison and district director to monitor the district's policy in this regard.

3.2.4 Denial of petition

If the school's petition is denied, the district director will inform the school of the reasons for the denial and that the school may appeal the denial according to the procedures described in 8 CFR 103. [8 CFR 214.3(f)]

3.3 DESIGNATED SCHOOL OFFICIALS

Only a DSO, or designated school official, may sign Forms I-20A-B, I-20M-N, I-538, and other documents representing the approved school in matters dealing with F-1 or M-1 students.

3.3.1 Definition of designated school officials

For purposes of the regulations relating to F-1 and M-1 students, a DSO is defined as "a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official." [8 CFR 214.3(l)(1)] A DSO may be a faculty member or regular staff member employed full or part time for the purpose of representing the school in F-1 or M-1 student matters. A faculty or staff member whose duties include recruiting foreign students may be a DSO if that official's duties are not primarily to recruit foreign students.

A DSO must be so designated by the "president, owner, or head of a school or school system," and that official "may not delegate this designation to any other person." A faculty or staff member whose duties include recruiting foreign students may be the DSO if his or her compensation is not derived from commissions from recruitment of foreign students. [8 CFR 214.3(l)(1)]

3.3.2 Limitation of number of designated school officials

"Each school or institution may have up to five designated officials at any one time. In a multicampus institution, each campus may have up to five designated officials at any one time. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time." [8 CFR 214.3(l)(1)] This limitation in the number of DSOs is meant to ensure control by the school's top authorities of the administration of the regulations regarding F-1 and M-1 students and to prevent irresponsible or improper actions by school officials. It poses problems for some schools, especially those that operate under a decentralized organizational structure. In many cases, documents prepared by some staff members must be reviewed and signed by other staff members who are officially DSOs. The INS has plans to revise the I-17A in the future to expand the number permitted to more than 5.

3.3.3 Name, title, sample signature, and statement of designated officials

In any application for school approval, a school must submit on Form I-17A "the names, titles, and sample signatures of designated officials" and a statement signed by each designated official that the official has read the INS regulations relating to nonimmigrant students, change of nonimmigrant classification for students, school approval, and withdrawal of school approval (see Section 3.2.1). A school must submit to the district director a similar statement, name, title, and sample signature of any new DSO on Form I-17A within 30 days of such a designation. [8 CFR 214.3(l), (2), and (3)] It is suggested that the school submit a photocopy of the earlier Form I-17A with the new Form I-17A. The new Form I-17A should show the name, title, and sample signature of the new designated official in the numbered space of the designated official being replaced and should be signed by the president or chief executive officer of the school.

3.3.4 Responsibilities and role of designated school officials

Designated school officials represent and speak for the school in all matters relating to F-1 and M-1 students. Only a DSO may sign an immigration document for the school in a matter relating to F-1 or M-1 students. A school's approval to accept nonimmigrant students may be withdrawn for failure of a school official to comply with record-keeping and reporting requirements, for willful issuance by a school official of a false statement, for any conduct on the part of a school official that does not comply with the regulations, and for a number of other acts of malfeasance on the part of a school official (see Section 3.6.1). Designated school officials are charged with considerable responsibility to their schools for maintaining their schools' approval to enroll nonimmigrant students. Responsible institutions will select, train, support, and monitor DSOs with care. Funds to support these activities must be committed by any institution seeking to accept F-1 or M-1 students.

3.3.5 Relationship with INS

The operating instructions (OIs) emphasize the need for INS officers to establish and promote a constructive relationship with DSOs and nonimmigrant students. In recognition of the influence of INS in determining students' attitudes and impressions of the United States, its officers are directed to be courteous, respectful, and sensitive to the students. Furthermore, INS officers are directed to meet at least annually, where practicable, with DSOs and students "in a friendly, cordial, and sociable atmosphere conducive to promoting a mutual attitude of cooperation and assistance." The director of outreach at INS's central office is also charged with responsibility for setting up student and school workshops to discuss relations. [OI 8 CFR 214.3(g), (h), and (i)] INS hopes to maintain good relationships between DSOs and INS officers. In recent years most workshops of this kind have been organized as part of NAFSA local, state, and regional conferences with INS participation. While a good working relationship between DSO and INS schools liaison at the district level is essential, it is important to remember that an increasing number of our INS applications are being adjudicated at the regional service centers. NAFSA members involved in regional conferences may wish to consider inviting participation of the service centers in these conferences.

3.4 CONTROLS ON ISSUING FORMS I-20A-B AND I-20M-N

The regulations are precise about the controls that approved schools must exercise in issuing Forms I-20A-B and I-20M-N. These controls are designed to prevent abuses by mala fide schools, unscrupulous recruiters, schools that appear to be interested only in the tuition money of foreign students, and others who have in the past abused the privilege of enrolling nonimmigrant foreign students.

3.4.1 Specific conditions of issuance of Forms I-20A-B and I-20M-N

According to the OIs, "Forms I-20 are to be issued only to aliens who are F-1 or M-1 students or who are seeking F-1 or M-1 status." [OI 8 CFR 214.2(f)(49)(ii)] This provision was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect. Forms I-20 may not be issued to other individuals, such as lawful permanent-resident students, who may request these forms for such purposes as obtaining foreign exchange or passport renewal.

A Form I-20A-B or I-20M-N may be signed and certified only by a DSO and only after page 1 of the form has been completed in full. The form must be issued in the United States. School officials may not sign blank forms and allow recruiters or other unauthorized persons to complete and issue the forms upon recruiting a student. A Form I-20A-B or I-20M-N issued by a school system must specify which school within the system the student will attend. [8 CFR 214.3(k)]

In addition, a Form I-20A-B or I-20M-N may be issued only after the following four conditions have been met [8 CFR 214.3(k)]:

1. "The prospective student [must make] a written application to the school." An oral or telephone application, or an application in person without a written request for admission to the school, is not acceptable. An application prepared by a representative of the student on behalf of the student does not satisfy the requirement unless it is made on behalf of a scholarship student by an official agency of the student's government or it is made on behalf of a student by the student's parent or legal guardian. [1985 OI 8 CFR 214.2(f)(49)(v)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.]

2. "The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents [must be] received, reviewed, and evaluated at the school's location in the United States." This requirement refers to "transcripts or other records of courses taken" that are appropriate to the particular course of study to which the student is being admitted, and does not necessarily require that all students submit transcripts or course records if those records are not relevant

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Note:
The 1983 student/schools regulations included revisions to 8 CFR 214.1(b), 214.2(f), 214.2(m), 214.3, 214.4, 248.1(c) and (d), and 248.3(b) and (d). Operations Instructions elaborating on these regulations were published on 24 May 1985 and were numbered OI 214.2(f)(1-50), 214.2(m)(1-4), 214.3(a-m), 214.4(a-f), and 248.7(a-f). The revised student/schools regulations of 22 April 1987 changed only parts of 214.2(f)(4-10) and 214.3(g), leaving the remainder of the existing regulations intact. Operations Instructions published on 24 December 1987 to implement the 1987 regulations revised only parts of OIs 214.2(f) and 214.3(g), leaving other parts apparently intact, and using a slightly different numbering system than that of the 1985 OIs. Supplemental operating instructions were published in July 1988. Until the INS publishes an integrated version of the regulations and the OIs, advisers must work from many sources. Some of the citations in Sections 3, 4, and 5 of this volume can be understood only in this context.

to the courses for which the students are applying. The regulation specifically requires that the school receive evidence of financial responsibility for the student in all cases and that the application and supporting documents be reviewed at the school in the United States, not merely by a recruiter or other individual who is not physically present at the school.

3. "The appropriate school authority [must determine] that the prospective student's qualifications meet all standards for admission." The "appropriate school authority" is any person or agency authorized by the school's administration to make such decisions. In practice it is usually the admissions officer who makes the decisions. That authority must determine that the applicant meets all standards appropriate to the school or program to which the student is being admitted.

4. "The official responsible for admission at the school [must accept] the prospective student for enrollment in a full course of study." This does not necessarily mean that there must be one official responsible for admission at the school and/or that that particular official must approve the admission; it does mean that the student must be officially accepted for enrollment in the school by whatever person, agency, or procedure is appropriate for admission to the particular school or program. It also means that the student must be accepted for the purpose of enrolling in a full-time program of study and not as a part-time or casual student.

It is not permissible to issue a provisional or conditional Form I-20, indicating that a student will enroll after fulfilling certain conditions, such as successfully completing an intensive English-language program. Only when the appropriate school authority has determined that a prospective student has met all requirements for admission to that school and, consequently, has been accepted for a full course of study, may the I-20 be issued. [1985 OI 8 CFR 214.2(f)(49)(iv)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.] Schools that provide full-time or supplementary English-language instruction may issue Forms I-20 to students who have been accepted for a full course of study combining academic and language study until the student attains the language proficiency to pursue a full-time academic program.

No fees may be charged for the issuance of Forms I-20. Once the school authority has determined that a prospective student has met all standards for admission and has fulfilled the other requirements of 8 CFR 214.3(k) (written application, transcripts, and financial support), a DSO must issue the form. INS takes the position that requiring a fee for issuing Forms I-20 may constitute exacting a fee for the performance of an act required by federal regulation, which is a federal crime. [1985 OI 8 CFR 214.2(f)(49)(iii)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.] Schools may assess an application fee, but once a student meets all requirements of the school for admission and of the regulations for issuing Forms I-20, no fee may be assessed for issuing the form.

If a school system operates in more than one INS district, Forms I-20 may be issued centrally by a DSO, even though 8 CFR 214.3(a)(1) requires the filing of separate Forms I-17 for school approval, provided that the school official can certify awareness of all costs incurred by students at all schools within the school system. [1985 OI 8 CFR 214.2(f)(49)(vi)—This paragraph was omitted from the 1987 OIs, but it is assumed the policy is still in effect.]

3.4.2 Consequences of failure to meet conditions of issuance of Forms I-20A-B or I-20M-N

"Failure to comply with the procedures for issuance of Forms I-20A or I-20M" as detailed above is specifically given as a cause for withdrawal on notice of a school's approval to enroll nonimmigrant students (see Section 3.6.1). [8 CFR 214.4(a)(1)(xvii)] It is clear that by these regulations INS means to curb abuses by mala fide schools and unscrupulous recruiters.

3.4.3 Legal culpability of designated school official

In signing the Form I-20A-B and/or I-20M-N, the school official certifies "under penalty of perjury" that:

> All information provided above in items 1 through 8 was completed before I signed this form and is true and correct. I executed this form in the United States after review and evaluation in the United States by me or other officials of this school of the student's application, transcripts, or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above-named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6) [or 214.2(m)(9)]; I am a designated official of the above-named school and I am authorized to issue this form." [Certification statement, Form I-20A-B and I-20M-N]

Successful prosecution for perjury would require INS to prove that the school official willfully and knowingly certified to false information with the intent to deceive. Unintentional omissions and misinterpretations do not constitute perjury. U.S. law provides severe penalties for willfully making a false statement to a government official. [18 U.S.C. 100] While it is unlikely that INS would pursue a criminal charge for perjury or for making a false statement except in extreme cases, school officials should be aware of this possibility and of the importance INS attaches to the proper certification and signing of Forms I-20A-B and I-20M-N.

3.4.4 Enrollment of aliens in other than F-1 or M-1 status

It should be noted that all of the requirements referred to above apply only to the admission and enrollment of students who are issued Forms I-20A-B or

I-20M-N and who are in the United States for the purpose of attending school under the provisions of sections 101(a)(15)(F) or 101(a)(15)(M) of the Act. Neither the immigration regulations nor any other laws or regulations address the school's legal responsibility regarding the admission and enrollment of aliens who hold any other immigration status except that of J-1 exchange visitors (see Section 9), or who are out of status. The legal status of those aliens not in F, M, or J status is a matter between the aliens and INS. A school does not jeopardize its approval to enroll F-1 or M-1 students by admitting and enrolling other aliens, regardless of their status. Advisers may wish to give careful counsel to B-2 visitors for pleasure regarding their length of stay in the United States and the likelihood of success if they apply to change from B-2 to F-1 status (see Section 4.12.1.1).

The INS offered an opinion about the classes of aliens who may study in the United States as part of the 14 January 1994 memorandum referenced in Section 3.2.1.1. The memorandum discusses many types of aliens who may study in the United States including: F-1, M-1, or J-1 students and their dependents; diplomats and representatives of foreign governments and their immediate families; dependents of nonimmigrant workers; principal nonimmigrant workers or visitors (as long as their school work is incidental to their primary purpose for being in the United States); refugees, asylees, and certain other aliens considered to be residing permanently in the United States under color of law. B-2 visitors who were admitted to the United States as "prospective students" are expected to change to the appropriate student status after their entry into the United States. B-2 visitors who were admitted to the United States "for a short course of study" are permitted to enroll in a language program of under 18 hours of course work per week. Aliens who are in proceedings or whose applications for reinstatement to or extension of student status are pending may enroll full-time pending resolution of their immigration status. [*Interpreter Releases*, 14 March 1994]

A logical conclusion from working through such a list is to rely on the basic tenet that the alien's status is a matter between the alien and the INS, unless specifically stipulated in the regulations or the statute.

This memorandum may be instructive to advisers who have responsibilities for determining residency for tuition classification purposes. It examines the Supreme Court case which determined that undocumented minor aliens have the right to attend public elementary and secondary schools. The effect of the Supreme Court case [*Plyler v. Doe*, 457 U.S. 1982] on postsecondary educational institutions is not clear, but INS reiterates the idea that the definition of residency for tuition purposes is a matter of state jurisdiction and that the INS defines the term "residence" only for immigration purposes.

3.5 RECORD-KEEPING AND REPORTING REQUIREMENTS

The regulations are specific about the records schools must keep on F-1 and M-1 students, about the requirement that schools must release to INS officers specific information concerning the status of individual students, and about the requirements for periodic reporting to INS regarding the status of all F-1 and M-1 students enrolled. In particular, these regulations place responsibility on schools enrolling foreign students to report on their status and to provide information to the INS computerized record-keeping system that monitors their status. Although the regulations specify certain kinds of records and information that must be kept and released to INS, they do not require the release of other kinds of records and information to INS or any other agency. School officials are rightly concerned about the legal, ethical, and educational ramifications of releasing confidential, personal, academic, or other information to a government agency charged with enforcement of the law, and they resist any erosion of their relationship of confidence and trust with their students. Responsible school officials, therefore, must both comply with the regulations and serve their students and their institutions as counselor-educators rather than policing agents. The following discussion offers guidance in maintaining that delicate balance between the quasi-enforcement role required by federal regulations and the helping role basic to the relationship between educators and their students.

3.5.1 Required records and documents

The regulations state that "an approved school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20A or I-20M while the student is attending the school and until the school notifies the Service" on Form I-721, the Student Status Form, that the student is not pursuing a full course of study (see Section 3.5.3). [8 CFR 214.3(g)(1)] Note that this requirement applies only to "each F-1 or M-1 student to whom [the school] has issued a Form I-20A or I-20M." It does not apply to F-2 or M-2 dependents, exchange visitors, any other aliens, documented or undocumented, or U.S. citizens. An interesting question is raised, however, by the reporting requirements, which mandate that schools note on the Form I-721 all the F-1 and M-1 students attending that school, whether or not they issue Forms I-20 to them. [8 CFR 214.3(g)(2); OI 8 CFR 214.3(k)(1)] By doing so, the regulations require schools to make reports, under threat of withdrawal of school approval for noncompliance, on students for whom they are not required to keep records. The regulations appear to require schools to report on students about whom the DSO may have no knowledge, personal or documentary, and to keep records about students unknown to them and for whom they are not required to keep records (see Sections 3.5.2 and 3.5.3.2).

The school must maintain records on each F-1 and M-1 student during the entire time the student attends the school and until the school reports to INS the student's termination, failure to carry a full program of study, or failure to continue enrollment. [8 CFR 214.3(g)(2)] Therefore, student files may not be destroyed immediately after the student leaves school, but must be maintained with the required information until the school completes its required reports to INS. Since the INS has not issued a Form I-721 since 1988, advisers are cautioned to keep student records until the future of the I-721 is clarified (see Section 3.5.3).

Although the regulations require that schools maintain specified records and documents, they do not state or imply that the records and documents must be maintained in a centralized location. Most such records and documents are maintained by schools in scattered locations, such as admission offices, records offices, foreign student offices, dean's offices, and similar places. The records and documents need not be collected and centralized, and schools may retain their present record-keeping practices provided the required information is available at some location within the school to which the DSO has access.

"The school must keep a record of having complied with the reporting requirements for at least 1 year." [8 CFR 214.3(g)(1)] The reporting requirements referred to here are the reports submitted on Form I-721 (see Section 3.5.3). Schools must keep a record of having made these reports for 1 year, presumably by keeping copies of the reports submitted to INS. A school may destroy the records and documents on any individual F-1 or M-1 student after having reported on the Form I-721 that the student has terminated or is not carrying a full program of study; however, schools must maintain a record of having made that report for 1 year after having done so.

"If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status." [8 CFR 214.3(g)(1)] A school may have destroyed its records on an F-1 or M-1 student after reporting to INS that the student was not carrying a full course of study, but if that student is restored to status by INS to attend the same school, the school must maintain required records from the time of reinstatement until the school again notifies INS that the student is not carrying a full program of study.

The information and documents that the school must maintain on each F-1 and M-1 student to whom it has issued Form I-20A-B or I-20M-N are the following [8 CFR 214.3(g)(1), *Federal Register*, 22 April 1987, p. 13229]:

"(i) Name." This information is contained in the passport and on Forms I-94, I-20A-B or I-20M-N, and I-20 ID Copy.

"(ii) Date and place of birth." This information is contained in the student's passport and on the application for admission.

"(iii) Country of citizenship." This information is contained in the passport and on the Forms I-94, I-20A-B or I-20M-N, and I-20 ID Copy.

"(iv) Address." This means a residence address and not a post office box number [OI 8 CFR 214.3(j)], as it is intended to enable INS to locate the student physically. Schools are required to make a good-faith effort to obtain and maintain this information and to have reasonable procedures in operation that will collect and update the information in a systematic manner. However, a school cannot be penalized for failure to have current and accurate addresses for all of its F-1 or M-1 students if it does have such procedures in operation if individual students fail to cooperate, either purposefully or by neglect or omission. In such cases, students are directly responsible to INS and the school cannot be held liable.

"(v) Status, i.e., full-time or part-time." This information should be readily available during any regular school term after the student has registered and the school has processed its enrollment records. Note that a student may be considered, for this purpose, to be enrolled in a full-time program in certain circumstances, although the formal registration data may not so indicate. One such example would be during an authorized vacation period, if the student was enrolled in a full-time program during the preceding term and is eligible and intends to enroll in the same full-time program in the succeeding term. Another example would be an undergraduate student who was advised to enroll for less than 12 hours by a DSO for valid academic reasons. The most common case is a student enrolled in a graduate program who has finished all course work and is spending a semester preparing a thesis or dissertation. The need to maintain substantiating documentation in such circumstances is evident. (See the discussion in Section 4.5.2. Also see Section 3.5.3.1 regarding the exercise of care in determining which students are and are not pursuing full programs of study.)

"(vi) Date of commencement of studies." This information refers to the date the student began a full-time course of study as an F-1 or M-1 student after having been issued Form I-20A-B or I-20M-N by the school.

"(vii) Degree program and field of study." If a student is not enrolled in a specific degree program, the school's records should indicate the specific nondegree educational program in which the student is engaged. Not all students intend to complete a degree or certificate program, but they must have a specific educational objective. Therefore a "special student" may enroll in order to make up certain academic deficiencies or to apply course work toward a course of study at another school, provided the student pursues a full course of study at the school attended. [1985 OI 8 CFR

214.2(f)(15)—This paragraph was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect.] If a student has not decided or declared a specific major field or course of study, "undecided" or "undeclared" should suffice to identify the field of study.

"(viii) Whether the student has been certified for practical training and the beginning and end dates of certification." This regulation refers to practical training but not off-campus work authorization. The INS published regulations for F-1 practical training on 29 October 1991 and 20 July 1992. Optional practical training employment authorization now takes the form of an Employment Authorization Document (EAD). A simple way to make a record of this authorization would be to photocopy the EAD (see Section 4.9.3).

"(ix) Termination date and reason, if known." This refers to the date a student terminates attendance at the authorized school. In those cases in which a student simply stops attending classes and disappears, a reasonable estimate of the date of "termination" should be sufficient to meet the requirements of the regulations. The reason for termination of attendance is a required part of the records only if it is known, so schools need not make special efforts (for immigration purposes) to determine the reasons for the termination.

"(x) The documents referred to in paragraph (k) of this section." These are the documents and information related to the student's qualifications for admission to the school as an F-1 or M-1 student (see Section 3.4.1). These admission documents and records must be maintained while the student is enrolled and until the school reports to INS that the student is no longer pursuing a full course of study.

"(xi) The number of credits completed each semester." This requires the school to keep accurate records for previous semesters as well as the semester in progress. Since there is no requirement that one of the DSOs be custodian of the information and documents the school must maintain and make available to INS, this information could be maintained by the registrar or records office and be made available to a DSO as needed.

"(xii) A photocopy of the student's I-20 ID Copy." It would be prudent to make the photocopy not only when the student initially enrolls at the school, but every time a notation (transfer, extension of stay, employment, practical training) is made on that document. It can be assumed that this reference in the regulations now refers to the I-20 ID (Student) Copy, i.e., pages 3-4 of the I-20A-B.

If a student refuses to provide the school with the information necessary for the school official's report, the OIs state that the school official should bring this to the attention of INS, which may then request the information directly from the student. [OI 8 CFR 214.3(j)]

3.5.2 Release of information from records

A DSO is required to make available to any INS officer upon request and without subpoena any of the documents and records specified in 8 CFR 214.3(g)(1) (see Section 3.5.1). Information concerning an individual student must be provided within 3 working days; information on any class of students must be provided within 10 working days, although INS will first attempt to obtain information concerning a class of students from its record system. An important change in the 1987 regulations provides that INS's request for information must be in writing if the school asks for a written request. If INS seeks information on a student who is being held in custody, the school must reply orally on the same day but may request INS to provide written notification that the request has been made. [8 CFR 214.3(g)(1), *Federal Register*, 22 April 1987] Failure to comply with the request for information constitutes cause for withdrawal on notice of the school's approval to enroll nonimmigrant students. [8 CFR 214.4(a)(1)(i)] It is important to understand that regulations require the release of only the information specified and only to an INS officer in the manner described. They do not require or authorize the release of any information to anyone else, including representatives of other government agencies who may occasionally ask for information about students from abroad. These regulations, on the other hand, have no bearing on the release of "directory information" as set forth in the Family Educational Rights and Privacy Act of 1974, also known as the FERPA, or the Buckley Amendment, PL 93-380. According to the regulations,

> "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. [34 CFR 99.3]

INS officers are instructed that requests for information about large numbers of students at a school are burdensome and its officers should request only information that is needed and not available from its own data. [OI 8 CFR 214.3(l)(3)] Such requests, to the extent possible, should be made in writing, using the wording and format supplied by the OIs. [OI 8 CFR 214.3(l)(4)]

Although regulations require that records be kept for all F-1 and M-1 students to whom the school has issued Forms I-20, they do not require that records be kept for other students. Designated school officials are not required by regulations to keep records of any nature about students who are lawful permanent residents, students who may hold other nonimmigrant classifications (such as F-2 or J-1), or students who may have been issued Forms I-20 by other schools. A careful reading of this regulation, then, leads to the conclusion that school officials are required to make available to INS upon request only that information the school official must keep, and not information about a student who has not been issued the Form I-20 by that school (see Section 3.5.1).

INS asserts, however, that the certifications on page 2 of Forms I-20A-B (on page 1 of the 27 April 1988 revision of Form I-20) and I-20M-N signed by all F-1 and M-1 students authorize schools to release to INS information necessary to determine a student's immigration status, even if the school did not issue a Form I-20 to that student. [OI 8 CFR 214.3(l)(1)] This seems inconsistent with the constraints on release of school records imposed by FERPA. It also does not make clear the distinction between "authorize" and "require." Nevertheless, INS's general counsel has advised INS that this certification or authorization serves as a consent to release records under FERPA, shielding the school and its officials from being in violation of the law. Furthermore, the general counsel has advised that neither the school official nor the INS officer needs physical possession of the certification when making or complying with the request for information. [OI 8 CFR 214.3(1)(2)] With good reason, INS anticipates concerns by school officials about interpretation of FERPA and indicates that, if problems are not resolved at the district level of INS, assistance may be requested from the INS central office, adjudications division, through the regional office. [OI 8 CFR 214.3(l)(2)(iii)]

Many schools have advised their school officials that the OIs (which are internal INS guidelines and do not have the force and effect of regulations or laws) cannot and do not override the strict requirements of FERPA and, consequently, that the officials should abide by FERPA in cases of requests for information for which a written consent to release information has not been received by the school. Undoubtedly, this question will need to be resolved in a court of law. For the time being, therefore, school officials might provide information to INS only on those students to whom the school has issued Forms I-20 and, therefore, about whom the schools are required to keep records. Since they are not required to keep records on other students, in particular those to whom other schools may have issued Forms I-20 (see Sections 3.5.1 and 3.5.3.2), specific requests for name, address, and other enrollment data might be referred to the registrar's office, which can provide directory information in accordance with FERPA. Other information specified in 8 CFR 214.3(g)(1), however, should not be provided without specific written consent from the students concerned.

Whether a school official should provide information or is under obligation to inquire of other offices or units of the institution to ascertain this information about students for whom the school is not required to maintain records for immigration purposes is a decision to be made in consultation with the registrar and, presumably, the general counsel of the institution. School officials should always resolve such dilemmas in view of the legal, ethical, and educational considerations discussed below in Sections 3.5.2.1, 2, and 3.

3.5.2.1 Legal considerations

FERPA prohibits schools from releasing information other than directory information (specifically defined therein) from school records to most entities outside the school unless the student has signed a consent for the release of the specific information to a specific entity. INS takes the position that the consent for the release of information from school records signed by each F-1 and M-1 student on page 1 of Form I-20A-B or I-20M-N constitutes "an effective method of insulating the school from an allegation that it is in violation of the Buckley Amendment" and that "neither the school official nor the Service officer needs physical possession of the consent when a request for information under the reporting requirements is made." [Introductory remarks to 1983 student regulations, *Federal Register*, 5 April 1983, p. 14578] Some institutional attorneys disagree with that interpretation, however, and hold that a consent to the release of information from school records must be more specific and must be in the physical possession of the school in order for it to be an effective and legal consent. This conflict in the interpretation of FERPA can ultimately be resolved only in a court of law, and no precedents exist at present.

In addition to the specific provisions of FERPA, schools and school officials must be alert to the possibility of a student's bringing suit against the school and/or school official for invasion of privacy and violation of the traditional and accepted concepts of confidentiality of records and information that exist between an individual and an adviser or counselor. Such legal questions are even more problematic than those raised by FERPA, and they are disturbing to school officials.

In order to protect themselves as much as possible from legal actions under FERPA or wider concepts of privacy and confidentiality, schools and school officials are advised to establish and follow regular and consistent procedures and guidelines governing the release of information about students to INS. The procedures and guidelines that follow are suggested as being in compliance with a reasonable interpretation of INS regulations regarding release of information, until legal precedents exist.

1. Schools should not release information of any kind other than directory information about students to INS, except upon receipt of a written request for specific information. Oral requests should be honored only when a student is in custody, or under unusual conditions in which an immediate response would clearly be in a student's interests. Nonspecific requests for information should not be honored.

2. School officials should release information pursuant to regulations only to INS and only about students to whom they have issued Forms I-20A-B or I-20M-N, and not about any other aliens who may be enrolled, unless those other aliens have given a written release of the information or the institution's legal counsel advises release of the information.

3. School officials should release information to INS only about the specific items listed in the regulations in 8 CFR 214.3(g)(1).

4. School officials should release information only from school records and not from the personal knowledge school officials might have about such matters as students' employment, marital status, life-styles, and personal conduct (see Section 3.5.2.2).

5. School officials should make a careful search of the records to ensure an accurate response.

3.5.2.2 Ethical considerations

The role of DSO for the administration of the school's responsibilities under the immigration regulations is usually only a minor part of a school official's broader institutional role as adviser, counselor, and helper to the student. In their roles as advisers, counselors, and helpers, school officials receive information not related to the immigration status of the student that is often confidential and personal. The ethics of advising, counseling, and helping require the preservation of the confidential nature of this information. Violations of confidence constitute serious breaches of ethical and professional conduct.

Compliance with the guidelines outlined in Section 3.5.2.1 forms the foundation for compliance with ethical and professional standards of conduct. In addition, school officials should make known to all students precisely what information about them is required to be released to INS under the immigration regulations. It is essential that students have a clear understanding of this legal responsibility of the school and the school official in order to protect the integrity of the relationship between the student and the adviser. School officials must carefully limit their disclosures of information to INS to those required under the regulations and that are fully known to their students. Officials must scrupulously preserve the confidentiality of all other information about the student.

The NAFSA Code of Ethics (NAFSA, 1992) speaks to these issues:

> Members have a responsibility to balance the wants, needs, and requirements of program participants, institutional policies, laws and sponsors, having as their ultimate concern the long-term well being of international educational exchange programs and participants. In relationships with students and scholars, members shall maintain the confidentiality, integrity, and security of student records and of all communications with students; secure permission of the student or scholar before sharing information with others inside or outside the organization, unless disclosure is authorized by law or institutional policy, or mandated by previous arrangement. Members who advise foreign students and scholars shall:
>
> - Fully inform students, at appropriate times, of the types of information the institution is required to furnish to governmental agencies, and furnish those agencies with only that information required by law and regulation
> - Decline to reveal confidential information about foreign students and scholars even if requests for such information come from law enforcement agencies or organizations appearing to have thoroughly benevolent motives
> - Refrain from invoking immigration regulations in order to intimidate students or scholars in matters not related to their immigration status.

3.5.2.3 Educational considerations

School officials must constantly bear in mind that their roles, the roles of the schools employing them, and the roles of the students they advise are educational in nature. Violations of confidences and unauthorized releases of information are sure ways to destroy the educational relationship between the institution and its students, undermining the learning environment and the very purpose of international educational exchange. With the exception of specific legal requirements, school officials must be vigilant in maintaining the students' confidence in their roles as counselor-educators.

In dealing with INS and individual INS officers, school officials should continually emphasize the importance of the educational process and encourage INS officers to observe and respect it. The OIs, in fact, restate for INS officers the commitment of the U.S. government "to the value of international student exchange activities." [OI 8 CFR 214.3(i)] Most INS officers are reasonable and will not demand actions by a school official that will erode or destroy the official's educational role. Upon encountering an INS officer who is not so inclined, school officials might be prudent to appeal to higher authorities—the district director, regional officers, or INS central office staff—in an attempt to establish procedures and parameters for enforcement and administration of the immigration regulations that will not affect the educational relationship between students and their schools and school officials.

3.5.3 Reporting requirements

Federal regulations state:

> At intervals specified by the Service but not more than once a term or session, the Service's processing center shall send each school (to the address given on Form I-17) a list of all F-1 and M-1 students who, according to Service records, are attending that school. A DSO at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above

information, the names and current addresses of all F-1 and M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The DSO must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within 60 days of the date of the request. [8 CFR 214.3(g)(2)]

In the event the INS central office does not send the list to all approved schools as frequently as permitted by the regulation, a district director may send it to any number of schools in the district at the intervals permitted. [1987 OI 8 CFR 214.3(g)(i)(1)]

These requirements, which radically changed the nature of reporting to INS by school officials, were first implemented in the spring of 1985. At that time they were combined with a one-time registration of all F-1 and M-1 students in the United States so that INS could complete and correct its student/schools data base. The list to which the regulation refers was Form I-721, the Student Status Form (a computer printout). The Form I-721 was sent to all schools for the second time in spring 1988 and again to a small test group of ten schools in the fall of 1989.

Numerous problems have plagued the issuance of Form I-721, despite the fact that NAFSA and INS have a long history of cooperation on the process. Problems included incorrect data on the first issuance; and, more discouragingly, incorrect data on the 1988 and 1989 forms, despite the efforts by school officials to provide correct and updated information that should have been incorporated. Correspondence between NAFSA and INS indicates that INS has made the decision to discontinue the use of the I-721 as a means to gather information on F-1 and M-1 students. [Letter from John F. Reichard to James Puleo of 27 November 1990] The correspondence further indicates that the development of a new system to meet the responsibility to Congress and the public to monitor and report on the foreign student population in this country will be a joint effort by INS and NAFSA. A subsequent memorandum from James Puleo indicates that the INS has "suspended" but not necessarily eliminated the I-721. While the shape of the next reporting system is unclear, it seems certain that INS will eventually institute some sort of regularized reporting system. Regardless of the shape the new system takes, advisers should note that the regulations require that the school must maintain copies of the reports made to INS for at least 1 year in order to be able to demonstrate on demand that it has complied with these requirements. Advisers who are conscientiously holding onto very old records at this point might want to consider contacting the INS schools liaison to ask for advice about disposal of records. At the very least, this will alert the INS district office to the fact that the school is making a good faith attempt at compliance with reporting requirements.

If INS sends a list of students for a report between school terms or during or shortly after a registration period for a new school term, it may not be possible for the school to provide the required information on a current basis. In such a case the school should either request an extension of the reporting time or exercise its discretion to make the report based on information from the preceding school term. Since the reporting form provides INS with critical data regarding the status of every F-1 and M-1 student in the United States, it is incumbent on school officials to be particularly diligent in responding to the form. To do otherwise would jeopardize students about whom data is misreported as well as jeopardize the school's approval to enroll nonimmigrant students. In several areas the codes may be subject to varying interpretations, or the DSOs may be encouraged, but not required, to make certain reports. The following discussion offers guidance concerning compliance with the requirements of the reporting form, whatever precise form it may take.

3.5.3.1 Reporting students who are not (or appear not to be) pursuing a full course of study

The requirement that a school official must note on the list whether or not each student on the list is pursuing a full course of study is relatively simple in most cases. However, school officials must exercise care in making such notations, as a report that a student is not carrying a full program of study may result in INS initiating an investigation and possibly taking action against the student. In most schools, the information required for this report will be taken from school records. School officials will need to give careful attention to the case of each student who the record indicates is not enrolled full time, but who might in reality be pursuing a full course of study for purposes of the immigration regulations.

A discussion of the meaning of "a full course of study" is presented in Section 4.5.2. School officials are urged to refer to that discussion when preparing the reporting form.

3.5.3.2 Reporting students not on INS lists

In addition to noting on the reporting form whether each student is or is not pursuing a full course of study, the school official is required to provide "the names and current addresses of all F-1 or M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status." [8 CFR 214.3(g)(2)]

The dilemma presented by this requirement is described in Section 3.5.2. Regulation 8 CFR 214.3(g)(1) requires a school to keep records only on those students to whom it has issued Forms I-20A-B or I-20M-N, yet 8 CFR 214.3(g)(2) requires school officials to add to the reporting form supplement the names and addresses of F-1 and M-1 students attending the school to whom the school has not issued Forms I-20. If the school is not required to keep records on these students, it cannot be required to make reports on them, and it will not have the information in its records as to their F-1 or M-1 status.

In all cases of reporting and release of information to INS, regulations require only the release of information from school records as specified in 8 CFR 214.3(g)(1), and not from a school official's personal knowledge of a student's activities (see 8 CFR 214.3[g][1] and Section 3.5.1). Items of information that are not part of a school's records cannot be demanded by INS except through a process of subpoena of a school official to give written or oral testimony.

3.5.3.3 Discretionary reporting of certain items

School officials are "encouraged" (but are not required) by INS to report out-of-status students and students who have terminated their studies to the district director between reporting periods, that is, in addition to the required reporting on the reporting form. [1987 OI 8 CFR 214.3(g)(i)(1)] School officials should exercise restraint in this regard in view of their role as counselor-educators, discussed above in Section 3.5.2.3. School officials also are invited (but not required) to make corrections in the data provided on the reporting form. If a school official has the time and resources and is able to provide such corrections without violating the legal, ethical, and educational considerations noted in Section 3.5.2, such action could be helpful to the students concerned.

3.6 WITHDRAWAL OF SCHOOL APPROVAL

3.6.1 Withdrawal of school approval on notice (for cause)

The regulations authorize INS to initiate proceedings for withdrawal of a school's approval to enroll nonimmigrant F-1 and M-1 students "on notice," which means withdrawal for a specific cause. Seventeen specific grounds for withdrawal are enumerated in the regulations. [8 CFR 214.4(a)(1)] An action for withdrawal on notice affords the school the protections of due process of law, preventing arbitrary and improper withdrawals of approval. District directors are instructed to give special emphasis to instituting proceedings to withdraw approval from schools not in compliance with the regulations in an effort to eliminate bad-faith schools from the list of those authorized to enroll F-1 and M-1 students.

3.6.1.1 Grounds for withdrawal of school approval on notice

The regulations provide that a school's approval to enroll nonimmigrant F-1 or M-1 students may be withdrawn on notice "if the school or school system is no longer entitled to the approval for any valid and substantive reason including, but not limited to, the following [8 CFR 214.4(a)(1)]:

"(i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena." Regulation 8 CFR 214.3(g)(1) requires that schools maintain specific records and information on F-1 and M-1 students and that schools release that information to any INS officer upon demand (see Sections 3.5.1 and 3.5.2). The requirements for written notice (oral in cases of students in custody) and the time frames for schools to respond, as noted above, must be observed by both INS and the school.

"(ii) Failure to comply with 8 CFR 214.3(g)(2)." Regulation 8 CFR 214.3(g)(2) refers to the requirement to report periodically on computer-generated lists (Forms I-721 or its successor) whether students on the list are pursuing full courses of study and to add to the list the names and addresses of other F-1 and M-1 students who are enrolled. A reasonable interpretation of that requirement may mean following the guidelines outlined in Sections 3.5.2 and 3.5.3.

"(iii) Failure of a designated official to notify the Service that an F-1 student intends to transfer to another school as required by 8 CFR 214.2(f)(8)(ii)." Although this reason is obsolete under the regulations that became effective on 22 May 1987, presumably it continues to apply to such failures that may have taken place prior to that date. This is unlikely to affect advisers now.

"(iv) Willful issuance by a designated official of a false statement or certification in connection with a school transfer or an application for employment or practical training." Note the inclusion of the word "willful" in this provision.

"(v) Any conduct on the part of a designated school official which does not comply with the regulations." This ground for withdrawal of school approval is distressingly vague and all-inclusive. Since the regulations in most circumstances are quite specific, a reasonable interpretation of this provision would be quite narrow and limited in scope. Advisers will want to maintain close communication with their INS schools liaison in order to monitor climate of relations between their offices and the local INS.

"(vi) The designation as a designated school official of an individual who does not meet the requirements of 8 CFR 214.3(l)(1)." This refers to the designation as a DSO of a person whose compensation is derived chiefly from foreign student recruitment fees, who is not regularly employed at the location of the school in the United States, and/or who otherwise does not qualify as a DSO as described in Section 3.3.1.

"(vii) Failure to provide the Service with the names, titles, and sample signatures of designated officials as required by 8 CFR 214.3 (l) (2)." See Section 3.3.3.

"(viii) Failure to submit statements of designated officials as required by 8 CFR 214.3 (l) (3)." See Section 3.3.3.

"(ix) Issuance of Forms I-20A or I-20M to students without receipt of proof that the students have met scholastic, language, or financial requirements." See Section 3.4.1.

"(x) Issuance of Forms I-20A or I-20M to aliens who will not be enrolled in or carry full courses of study as defined in 8 CFR 214.2 (f) (6) or 214.2 (m) (9)." This refers to the intent of the school issuing the Forms I-20A-B or I-20M-N. The school that issues those forms must do so with the understanding that the student is admitted for the purpose of carrying a full program of study and not for a part-time or casual program. A student is not required to intend to be a degree or certificate candidate as long as the student pursues a full course of study and has a specific educational objective. [1985 OI 8 CFR 214.2(f)(15)—This paragraph was omitted from the 1987 revision of the OIs, but it is assumed the policy is still in effect.] If the student subsequently fails to carry a full program of study, only the student is subject to punitive action. The school cannot be held responsible for the failure of the student to comply with the regulations. The school must report this fact to INS only when next required to respond to a periodic computer-generated list from INS or when requested to do so by an INS officer.

"(xi) Failure to operate as a bona fide institution of learning."

"(xii) Failure to employ qualified professional personnel." Presumably this refers principally to teachers who teach the students, but it could also be applied to DSOs who demonstrate that they are not qualified for their positions by not complying with the immigration regulations.

"(xiii) Failure to limit its advertising in the manner prescribed in 8 CFR 214.3(j)." This paragraph limits a school in its advertising and publicity with regard to its approval to accept nonimmigrant students to a statement that reads, "This school is authorized under Federal law to enroll nonimmigrant alien students." The limitation is designed to prevent schools from implying any INS endorsement of or recommendation about the school by virtue of its approval to enroll F-1 or M-1 students.

"(xiv) Failure to maintain proper facilities for instruction." This refers to the physical plant of the school, its library and laboratory resources, and any other facilities required for proper instruction conducted by the school. It is unlikely that INS would attempt or be able to determine what constitutes or does not constitute proper facilities, except in the most extreme cases.

"(xv) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the petition." Loss of accreditation or licensing in itself would not necessarily constitute a ground for withdrawal. It would be a ground for withdrawal, however, if the loss of accreditation or licensing negatively affected the school's ability to qualify graduates in the manner that was represented in the initial petition for school approval or any subsequent review of that approval, or if the school could no longer meet the requirements of 8 CFR 214.3(b).

"(xvi) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the petition for school approval." A school cannot build itself up in order to obtain school approval and then let itself atrophy after obtaining that approval. If it does not maintain the physical plant, curriculum, and teaching staff as represented in the petition, its approval can be withdrawn on notice.

"(xvii) Failure to comply with the procedures for issuance of Forms I-20A or I-20M as set forth in 8 CFR 214.3(k)." See Section 3.4.1. This provision appears to be only an expansion of (ix) above.

3.6.1.2 Procedures for withdrawal on notice

If a district director determines that a school is no longer entitled to school approval to enroll nonimmigrant students for one or more of the reasons enumerated above, INS will send a warning letter to the school. The warning letter must detail the dereliction(s) and advise the school that repetition of the offense(s) may lead to proceedings to withdraw the approval. The letter may ask for an explanation of the cause(s) of the offense(s) and an indication of corrective action taken or to be taken. The warning letter must also be accompanied by Form I-17 and, if applicable, Form I-17B, to be submitted as a request for continuation of its approval. [OI 8 CFR 214.4(c)]

If the school does not rectify its dereliction and the grounds for withdrawal continue to exist, INS will serve notice on the school of its intention to withdraw approval. The notice states the grounds on which INS intends to withdraw approval, setting out in reasonable detail the incidents upon which the finding of noncompliance is based. The notice also informs the school that it may submit within 30 days written representations supported by evidence setting forth reasons why the approval should not be withdrawn, and that it may request a hearing before a special inquiry officer. If the school admits the allegations or fails to respond within 30 days, school approval is withdrawn by the district director and there is no appeal from that decision. [8 CFR 214.4]

If the school contests the allegations and requests a hearing, that hearing is conducted before an immigration judge. INS is represented at the hearing by a trial attorney. The school may be represented by counsel at its own expense. The school has the opportunity to examine and object to evidence introduced against it, to present evidence in its own behalf, and to cross-examine witnesses. The immigration judge makes a decision either to withdraw the school's approval or to terminate the proceeding and allow the school approval to stand.

3.6.1.3 Reapplication after withdrawal on notice

The regulations declare: "If a school's approval is withdrawn on notice ... the school is not eligible to file another petition for school approval until at least 1 year after the effective date of the withdrawal." [8 CFR 214.4(a)(1)]

3.6.2 Automatic withdrawal of school approval

A school's approval to enroll nonimmigrant F-1 and/or M-1 students will be automatically withdrawn without a hearing if the school (1) terminates its operations [8 CFR 214.4(a)(2)]; (2) changes ownership (unless it files a new petition for school approval within 60 days of the change of ownership) [8 CFR 214.4(c)]; or (3) fails to respond to a notice of intention to withdraw approval for cause [8 CFR 214.4(c)].

"Automatic withdrawal of a school's approval is without prejudice to consideration of a new petition for school approval." [8 CFR 214.4(a)(2)] This means that a school whose approval has been automatically withdrawn can reapply for approval without fear of being judged adversely because the earlier approval was withdrawn.

3.6.3 Status of student at school where approval is withdrawn

When school approval is withdrawn the district director must notify each F-1 and M-1 student in attendance that approval has been withdrawn, that the student is permitted to remain in the United States to pursue a full course of study at that school only until the end of the current term plus 30 days, and that the student must seek admission to another INS-approved school or depart from the United States upon expiration of the authorized stay. If the student, despite diligent efforts, is unable to gain admission before the end of the authorized stay, the district director may grant voluntary departure not to exceed 6 months to allow the student to continue efforts to gain admission to an approved school. [OI 8 CFR 214.4(f)]

3.7 THE INSTITUTION AS EMPLOYER OF F-1 AND/OR M-1 STUDENTS

The Immigration Reform and Control Act of 1986 (PL 99-603) and pertinent regulations (8 CFR 274a and following) require employers to determine and verify by inspection of documents the employment eligibility of all workers, including aliens in F-1 and M-1 status. Failure to do so in the manner specified, including the execution of Form I-9 (which must be retained for at least 3 years or at least 1 year after the person leaves the employment, whichever is earlier), may subject the employer to civil and/or criminal penalties. The situations in which F-1 and M-1 students may be employed are discussed in Sections 4.9, 5.7, and 14.10.

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SECTION 4

F Status: Students

Richard B. Tudisco and Amy Yenkin

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Forms and Documents Discussed in This Section

ETA-9034	Attestation by Employers for Off-Campus Work Authorization for F-1 Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—for Academic and Language Students
I-20 ID	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—for Academic and Language Students (pages 3-4)
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-129	Petition for Nonimmigrant Worker
I-221	Order to Show Cause and Notice of Hearing
I-17	Petition for Approval for Attendance by Nonimmigrant Students
I-17A	Designated School Officials
I-17B	System Attachment
I-512	Authorization for Parole of an Alien into the United States
I-515	Notice to Student or Exchange Visitor
I-538	Certification by Designated School Official
I-539	Application to Extend Status/Change Nonimmigrant Status
I-541	Untitled cover letter
I-542	Untitled cover letter
I-543	Untitled cover letter
I-688B	Employment Authorization Document
I-765	Application for Employment Authorization
I-797	Notice of Approval or Extension of a Nonimmigrant Visa Application
M-242	Student and Schools Regulations

4.1 DEFINITION OF F STATUS

An F-1 visa and F-1 student status may be granted to an alien "who is a bona fide student qualified to pursue a full course of study" at an academic or language institution authorized to admit foreign students. When applying for an F-1 visa, the individual must prove to a U.S. consular official that he or she wishes to enter the United States temporarily and solely for the purpose of study and that the applicant has a permanent residence in a foreign country that he or she has no intention of abandoning. [Act 101(a)(15)(F)]

4.2 RESPONSIBILITIES ASSUMED BY AN APPROVED SCHOOL

Before a school may enroll nonimmigrant F-1 students, it must secure approval from the Immigration and Naturalization Service. A petition for approval is filed on both Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students) and Form I-17A (Designated School Officials), which were revised in 1983. The petition is filed with the district INS office having jurisdiction over the place in which the school or school system is located.

To obtain approval for attendance by nonimmigrant students, a school must submit, along with Forms I-17 and I-17A, evidence of its legitimacy as an educational institution. Furthermore, it must confirm that it has designated certain officials—called designated school officials (DSOs)—to sign forms I-20 School, I-20 ID, and I-538, and it must affirm its intention to abide by certain record-keeping and reporting requirements. If the petitioner is a school system, it must also submit Form I-17B (School System Attachment).

Detailed information about the responsibilities assumed by a school approved for attendance by nonimmigrant students is provided in Section 3.

4.3 ISSUANCE OF FORM I-20A-B TO F-1 STUDENTS

The Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students is commonly referred to as Form I-20; its formal designation is Form I-20A-B/I-20 ID (rev. 27 April 1988). For purposes of this chapter, the entire Form I-20A-B/I-20 ID will be referred to as Form I-20A-B. Page 1-2 of the Form I-20A-B/I-20 ID will be referred to as the Form I-20 School Copy, and p. 3–4 of the Form I-20A-B/I-20 ID will be referred to as the Form I-20 ID. This terminology is consistent with the INS usage promulgated in the October 1991 and July 1992 revisions of the F-1 student regulations. Until this usage is universally adopted, the DSO should be alert to variations in describing the Form I-20A-B/I-20 ID and its component parts.

An approved school may issue a Form I-20A-B to a foreign applicant only after the following conditions have been met:

1. The prospective student [must make] a written application to the school.

2. The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents [must be] received, reviewed, and evaluated at the

school's location in the United States.

3. The appropriate school authority [must determine] that the prospective student's qualifications meet all standards for admission.

4. The official responsible for admission at the school [must accept] the prospective student for enrollment for a full course of study. [8 CFR 214.3(k)]

The school issuing the Form I-20A-B is responsible for ensuring that the prospective student meets the four preceding requirements; determination of whether the prospective student meets all other conditions of nonimmigrant status falls to INS or the Department of State (see also Section 3.4).

4.3.1 General requirements

The DSO of a school approved for enrollment of F-1 students may issue Form I-20A-B to a prospective student only after determining that the prospective student has met all standards for admission and all requirements of 8 CFR 214.3(k), and that the school has accepted the student for enrollment in a full course of study. Requiring the payment of a fee for its issuance is not permitted and may subject the official to a federal criminal prosecution. The issuance of a conditional or provisional Form I-20A-B is not permitted because the regulations authorize issuance only after all admission standards have been met.

Form I-20A-B is to be issued only within the United States and may be signed only after it has been fully and accurately completed. In signing a Form I-20A-B, a DSO affirms "under penalty of perjury" that he or she or some other school official has examined the student's academic records and financial documentation and has determined that the student meets the school's admission standards (see also Section 3.4.1).

4.3.2 Academic requirements

The academic institution should satisfy itself that the applicant has successfully completed a course of study equivalent to that normally required of an applicant educated in the United States and seeking admission at the same level.

A prospective student who must travel to the United States for an admission interview or entrance examination has not met all the academic requirements and, consequently, is not entitled to Form I-20A-B. That student, like a student who wishes to travel to the United States for the purpose of selecting a school, should apply to a U.S. consular office for a B-2 "prospective student" visa (see also Sections 4.3.1 and 12.2.2.3). [OI 248.7(d)(2)(i) and (ii)]

4.3.3 Language proficiency

The applicant should be sufficiently proficient in English to pursue his or her course of studies on a full-time basis; if such proficiency is lacking, arrangements must be made to provide the student with instruction in English.

Academic institutions may require the foreign applicant to take a standardized English proficiency test and have the results sent to the institution for evaluation as a condition of admission. Such tests are administered at various centers in the United States and abroad. Proficiency in English need not be required if the institution in which the student will enroll conducts its courses in a language in which the student is proficient, or will enroll the student in a full course of English or a combination of English training and academic courses that will constitute a full course of study. [22 CFR 41.61(b)(1)(iii)] The level of proficiency required, therefore, will depend on the extent to which the institution can substitute for or supplement the academic program with special classes in English for non-native speakers.

4.3.4 Financial certification

The school is required to obtain certification that the applicant has financial resources adequate to provide for his or her expenses at the school without resorting to unauthorized employment. [8 CFR 214.3(k)(2) and 214.4(a)(1)(ix)] Funds may come from scholarships, fellowships, sponsoring agencies, the student's family, or any dependable source. The school should be satisfied that funds are guaranteed at least for the student's first year of study and that, barring unforeseen circumstances, adequate funding will be available from the same or equally dependable sources for subsequent years.

The school should make a reasonable estimate of all expenses—including tuition, fees, books, supplies, maintenance (lodging and food), health insurance, and miscellaneous expenditures (clothing, local travel, recreation, toiletries, telephone, etc.)—and review the estimate each year. Calculation of costs for tuition, fees, and health insurance will be relatively straightforward. Setting standardized living-expense budgets for foreign students may be more complex; DSOs may find helpful guidance by referring to their own institutional student financial aid budgets or the monthly maintenance rate (MMR) set for U.S. government scholarship programs, available from such administering organizations as the Institute of International Education. Some institutions recognize ranges for their foreign student living-expense budgets. For example, a range for a metropolitan-area school might have the low-end figure drawn from the Fulbright student rate, the high end coming from the Humphrey Fellowship rate, and the midrange, or standard, figure indexed to the school's own student financial aid budget.

If the student is depending on funds from a source outside the United States, the school is well advised to determine if restrictions exist on the transfer of dollars from the country holding the funds. If there are restrictions, the student should present evidence that they will not prevent the funds from being transferred. Alternatively, the school may wish to require an advance deposit of tuition and perhaps living expenses as well before issuing the Form I-20A-B. An advance deposit for tuition or living expenses is not considered a fee for issuing Form I-20A-B. The Higher Education Reauthorization Act of 1986 (PL 99-498) permits such advance-deposit requirements.

DSOs who build a grace period into the Form I-20A-B completion date (see Section 4.3.6) may wish to note this fact in the "Remarks" section (item 9) of the form. This will alert United States visa officers that funding for the grace period would be required only in exceptional circumstances.

Newly admitted applicants should be advised that they are likely to be required to present documentary evidence of financial support at the time they apply for a visa and again when they apply for entry into the United States.

4.3.5 Full course of study

In issuing Form I-20A-B to a foreign applicant, the authorized school official certifies that the applicant is admitted to the institution for the purpose of enrolling in a full course of study that will lead to the attainment of a specific educational or professional objective. The student need not intend, however, to complete the course of study as long as he or she has a specific educational objective, such as becoming a degree candidate after making up certain deficiencies. A school may issue a Form I-20A-B only to an applicant who is expected to be engaged in a full course of study, including postdoctoral study, as defined in Section 4.5.2.

4.3.6 Form I-20A-B completion date

In issuing Form I-20A-B to a foreign applicant, the DSO must specify an expected program completion date in item 5 of the form. INS guidelines for calculating that date direct the DSO to "make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline." Service regulations further prescribe that a "grace period of no more than 1 year [less is permissible] may be added onto the DSO's estimate." [8 CFR 214.2(f)(7)(ii)] Academic programs with highly predictable lengths of study will be more compatible with these guidelines than those with extensive project or research components, such as doctoral degrees. DSOs may wish, in general, to project the expected completion date based on their institution's academic policies, recognizing that if additional time is required, a student who has been maintaining good standing will be eligible for program extension (see Section 4.7).

Short-term programs, such as 3- or 6-week ESL courses, warrant special attention. Students enrolled in short courses are likely to consider options for continuing their studies only after finishing their immediate academic objectives—and after the application window for program-extension (see Section 4.7) has closed. To preserve program extension options for these students, DSOs would be well advised to add a 60-day grace period to short-term program completion dates (see also Section 4.3.4).

4.4 OBTAINING A VISA AND ENTERING THE UNITED STATES

To enable an applicant to obtain an F-1 visa to enter the United States for the purpose of undertaking a full course of study, the DSO issues the student a properly executed Form I-20A-B. It is advisable to keep a photocopy or computer record of the Form I-20A-B for the school's file.

The applicant must sign the certification in item 11 on page 1 of the Form I-20A-B (rev. 27 April 1988), attesting that he or she understands and will abide by the various conditions stipulated by F-1 status. Although the institution may be satisfied that an applicant meets all the conditions specified for obtaining F-1 status, the U.S. consular official makes the ultimate decision as to whether the applicant will be granted an F-1 student visa (see Section 2.3.4).

4.4.1 Aliens subject to passport and visa requirements

4.4.1.1 Obtaining a visa

An alien who is required to have a valid passport and visa for entry to the United States (see Sections 2.2.4 and 2.3.2) should apply for an F-1 visa at a U.S. consulate or embassy; in Taiwan, application is made at the American Institute in Taiwan. A personal interview with the consular official may or may not be required. The applicant is required to present a valid passport and Form I-20A-B; he or she should also be prepared to present proof of English-language proficiency and verification of financial support (see Section 2.3.3) to establish that all the requirements for nonimmigrant student status are met. Furthermore, an applicant for an F-1 visa must be prepared to demonstrate that he or she has a residence in a foreign country that he or she has no intention of abandoning (see Section 2.3.4). A U.S. consular official may require an applicant for an F-1 visa to post a bond to ensure that the applicant will maintain his or her lawful nonimmigrant status and depart from the United States after completing his or her specific educational objective. [22 CFR 41.61(c)] Such departure bonds are extraordinarily unusual.

Except for unusual circumstances, a visa will be issued within a few hours or days of the submission of the application. The consular official may need more time, however, should the application be submitted outside the consular district serving the home residence of the applicant. This is true particularly when third countries are involved because information deemed relevant to the visa decision may not be immediately available. Where security checks (generally referred to as "name checks") are made, visa issuance may take up to 10 working days. As of June 1994, security checks are made on applicants from Iran, Iraq, Libya, Estonia, Latvia, Lithuania, former Eastern Bloc countries, Vietnam, and the People's Republic of China. Children of government officials from Zaire and Nigeria are also subject to security checks, as are family members of Haitian officials considered to be "impeding democracy."

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of its validity, the number of entries allowed (see Section 2.3.1), and the name of the school whose Form I-20A-B the applicant used to obtain the visa. The Form I-20A-B is then returned to the applicant to use in applying for admission to the United States.

Extraordinary circumstances might prevent a person admitted to a school from getting a Form I-20A-B in time to apply for a visa and reach the school in a timely way. In such circumstances, the school may want to make use of international express mail or courier services. The "interested-party cables" the Visa Office formerly sent in these cases are no longer used, except possibly in cases involving countries where the courier services are not available. [*Foreign Affairs Manual*, Vol. 9, Sec. 41.61, N11.2]

In the event that a Form I-20A-B is not received, but a consular officer is satisfied through documentary evidence that an alien has been granted admission, the alien may be granted a B-2 Prospective Student visa. [OI 8 CFR 248(d)(2)(iii)] Similarly, a student with a Form I-20A-B who intends to enter the United States more than 90 days before the reporting date noted on Form I-20A-B may be issued a B-2 Prospective Student visa rather than an F-1 visa (see Sections 4.12.1.1 and 12.2.2.3).

4.4.1.2 Entering the United States; entry documents

When the applicant arrives at the U.S. port of entry, he or she presents a passport (or travel document), visa, evidence of financial support, and Form I-20A-B to the immigration official. Only versions of Form I-20A-B dated 27 April 1988 or thereafter are acceptable for initial entry. If the applicant has previously been in the United States in F-1 or M-1 status and has been issued Form I-20 ID or Form I-20 ID Copy (see note), he or she is expected to present that as well. On the initial entry in F-1 status, the immigration official must be satisfied that the applicant is destined to and intends to attend the school specified in the visa (see Section 4.4.2 for exceptions to the passport and visa requirements).

In cases of initial entry in F-1 status where a student does not intend to enroll at the school noted on the visa, the inspecting officer may, in the exercise of discretion, admit the student provided he or she presents a Form I-20A-B for the school he or she plans to attend, as well as documentary evidence of financial ability to attend that school. In addition, the student must establish either that failure to have the correct school noted on his or her visa resulted from circumstances beyond the student's control or that failure to be admitted would result in severe hardship to the student. If the student is not admitted to attend the preferred school but rather is admitted to attend the school noted in the visa by the consular officer, the student must attend that school for some period of time before seeking to transfer to the preferred school (see Sections 4.5.1 and 4.8). A student who attends a school other than the one authorized is out of status and must apply for reinstatement (see Sections 4.8 and 4.10). However, if a student who has been in student status in the United States has made a temporary visit out of the country and has transferred or intends to transfer between schools upon reentering the United States, the name of the new school does not need to be specified on the student's visa (see Section 4.11). [8 CFR 214.2(f)(4)(ii)]

Upon admitting the student to the United States, the immigration officer issues the student the departure portion of a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an F-1 student, and a unique 11-digit admission number. The Form I-94 is issued to each entering nonimmigrant and, except in the cases noted below, records all nonimmigrant transactions with INS. If the alien is in F-1 or M-1 status, transactions taken by INS are recorded on Form I-20ID. Transactions affecting E, H, L, O, P, and Q nonimmigrants are recorded on Form I-797, the notice of approval or extension of a nonimmigrant visa application (see Section 2.4.1). The admission number is the basis for the INS arrival/departure database known as the Nonimmigrant Information System (NIIS).

Upon the student's initial entry to the United States on a student visa, the admitting immigration official retains the Form I-20 School Copy (p. 1-2) and returns to the student Form I-20 ID (p. 3-4 of Form I-20A-B), marked to show the date and place of admission and the admission number. All F-1 students' transactions with INS are noted on this form except for the adjudication of optional practical training and employment based on economic hardship, which results in issuance of an Employment Authorization Document. The admission number goes into the "student enhancement" program of the NIIS. By means of this program, INS keeps track not just of the arrivals and departures of F-1 students but also of their fields of study, degree objectives, transfers of schools, permission to work, practical training, and several other matters. The Form I-20 ID is issued only to students and not to dependents holding F-2 status.

Note

Between 1984 and 30 June 1988, the "Form I-20 ID Copy" was a yellow card. INS discontinued the yellow card on 30 June 1988. A new version of the Form I-20A-B, dated 27 April 1988 and designated Form I-20A-B/I-20 ID, became available later the same year. The April 1988 Form I-20A-B has the designation "I-20 ID (Student) Copy" printed sideways in the left margin of page 3. INS instructed students with the old, yellow Form I-20 ID Copy to staple the card to the new version of the Form I-20 ID. F-1 students are asked to retain all Forms I-20 ID they may acquire.

The admission number is intended to be an individual alien's lifelong identifying number for study in F-1 or M-1 status. Students in F-1 status are instructed to keep all Forms I-20 ID in their possession at all times and not to surrender them upon leaving the United States. The Form I-94, by contrast, is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba. When an F-1 student who has surrendered Form I-94 upon leaving the United States subsequently reenters the United States, he or she is issued a new Form I-94, but not a new Form I-20 ID. The preprinted admission number on the new Form I-94 is stricken and replaced with the student's Form I-20 ID admission number. INS expects anyone who receives a Form I-20 ID to retain it, especially if there is any possibility that he or she will seek to enter the United States in F-1 or M-1 status.

An alien seeking admission to the United States in F-1 or M-1 status who has previously been in this country as an F-1 or M-1 student, but who does not know his or her admission number, can experience delays at the port of entry while INS searches its records for the number. Additional information about the uses of Form I-20 ID appears throughout this section of the Manual. The regulations state that, "should the student lose his or her current [Form] I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsements for employment and notations, may be issued by the DSO." [8 CFR 214.2(f)(2)]

4.4.1.3 Admission for "duration of status"

The F-1 student will be admitted to the United States for "duration of status," noted as "D/S" on both Form I-94 and Form I-20 ID. Duration of status means the period during which the student "is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)]

During the 60-day period, students may apply to move to another educational level (see Section 4.7.3), transfer schools (see Section 4.8), or change to another nonimmigrant status (see Section 2.7). No employment is permitted during the 60-day period if the student intends to leave the United States rather than continue in another educational program. A student applying for optional practical training following completion of a course of study may do so during this 60-day period following completion of studies (see Section 4.9.3.2.1).

In addition to enrolling full time during the academic year, F-1 students must keep their passports valid (unless they are exempt from the passport requirement—see Section 2.2.4).

Canadians who enter the United States from outside the Western Hemisphere must have passports; they are not required to have visas. [8 CFR 212.1(a)]

4.4.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most common exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere [8 CFR 212.1(a)], and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country of citizenship to the United States (see Section 2.2.4). [8 CFR 212.1(d)] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an F-1 student. The procedure is the same as that followed by aliens subject to passport and visa requirements, except that the applicant need not present either a passport or a visa.

4.4.3 Temporary admission with Form I-515

If a prospective F-1 student appears at a port of entry in good faith without a properly completed Form I-20A-B or a properly endorsed p. 4 of Form I-20 ID, but otherwise appears eligible for admission as an F-1 student, the INS inspector may admit him or her for a period of 30 days and issue Form I-515 (Notice to Student or Exchange Visitor). That form instructs the alien to obtain a properly completed Form I-20A-B from the school the student attends and send it, along with any previous Forms I-20 ID (if he or she has one), Form I-94 for the student and any accompanying dependents, and Form I-539 to the INS office having jurisdiction over the school. The district office will then grant the alien and any F-2 dependents permission to stay for duration of status, noting the extension on the student's Form I-20 ID and on the Forms I-94 of the student and dependents.

An F-1 student who responds in a timely manner to the requirements specified by Form I-515 is considered to be maintaining status while the formal INS adjudication is pending. For purposes of verification of employment eligibility (see Section 4.9.5), such student may be characterized as having permission to stay for the period specified by the Form I-20A-B used in response to the Form I-515. [INS-NAFSA meeting, 13 November 1991]

If the immigration inspector at the port of entry is unable to ascertain that the applicant is eligible for admission as an F-1 student, the inspector may parole the alien into the United States for "deferred inspection." The alien is required to appear in person at the district INS office having jurisdiction over the school the student plans to attend to complete inspection and admission to the United States (see Section 14.2.3).

4.5 MAINTENANCE OF STATUS

4.5.1 General requirements

Once an alien is admitted to the United States in F-1 status, he or she must meet certain obligations in order to maintain status. The student must

1. have a passport that is kept valid at all times, unless exempt from the passport requirement. (The requirement that passports be kept valid for a minimum period of 6 months into the future was dropped in late 1987 [*Federal Register*, 30 November 1987, pp. 45445-46]) (see Section 2.2.4);
2. attend the school he or she was authorized to attend (see Section 4.4.1);
3. continue to carry a full course of study (see Section 4.5.2);
4. follow certain procedures if the student must remain in the United States longer than the length of time estimated for completion of his or her educational program, as stated on the initial I-20A-B issued to begin the program of study (see Section 4.7);
5. follow certain procedures to continue from one educational level to another (e.g., from the bachelor's to the master's level) at the same school (see Section 4.7.3);
6. follow certain procedures to transfer to a school other than the one originally authorized (see Section 4.8);
7. limit employment, both on campus and off, to a total of 20 hours per week while school is in session (see Sections 4.9.1 and 4.9.2);
8. refrain from off-campus employment without authorization (see Section 4.9.2); and
9. report a change of residence to INS within 10 days of the change (see Section 2.5.2).

The student is admitted to the United States for "duration of status," defined in the regulations as the period during which the student "is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)]

See Section 3.5.3.1 for the DSO's responsibilities regarding students who may not be carrying a full course of studies. School officials are not required to report other violations of status to INS.

4.5.2 Full course of study

The regulations define a full course of study as follows:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least 12 semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of 12 semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a postsecondary language, liberal arts, fine arts, or other nonvocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within 8 CFR 214.3(c) (1) or (2), and which has been certified by a designated school official to consist of at least 12 clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least 18 clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least 22 clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation. [8 CFR 214.2(f)(6)(i)]

4.5.2.1 Postdoctoral students

Students who have completed requirements for a doctorate may be offered the opportunity for advanced study at the postdoctoral level. Under certain conditions discussed below, such students are eligible to apply for F-1 visas to come to the United States, to continue in F-1 status for the new educational program at the school they were last authorized to attend, to effect a transfer in F-1 status to begin a new educational program, or to change nonimmigrant classification to F-1 in order to undertake postdoctoral study. [8 CFR 214.2(f)(6)(i)(a)]

Conditions under which nonimmigrant postdoctoral appointees are eligible for F-1 classification were set forth in a 12 October 1988 INS cable to its field offices. The cable said "on-campus employment pursuant to the terms of a ... postdoctoral appointment ... must, normally, be performed on the premises of the school and is limited to no more than 20 hours a week when school is in session." The cable went on: "Only those postdoctoral fellows pursuing an educational objective that requires a combination of course work and no more than 20 hours of research per week while school is in session are certifiable as F-1 students." A 7 November 1988 INS cable exempted postdoctoral students in F-1 status prior to 12 October 1988 from the 20-hour-per-week work limitation and provided assurance that neither the school nor such F-1 postdoctoral fellows would be subject to "sanctions or penalties. Nor will it affect consideration of a future request by [such a] student for adjustment."

The school accepting the student for full-time postdoctoral study issues Form I-20A-B, checking item 4h, "Other," and entering the word "postdoctoral" in that item. Although no time limit for postdoctoral study is set by regulation, INS has directed its officers to look into cases where it appears that the student may engage in postdoctoral study for more than 3 years.

4.5.2.2 Deviations from the full-course-of-study requirement

In the situations described below, F-1 students are considered to be maintaining status even if they are not registered for a full course of study.

1. Vacation. "An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation." [8 CFR 214.2(f)(5)(iii)]

2. Medical problem. "A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery." [8 CFR 214.2(f)(5)(iv)] Because medical problems may not be noted on a school's enrollment records, the DSO should secure from the student a statement from the health-care practitioner requiring or recommending the interruption or reduction in studies.

DSOs would be well advised to develop an institutional policy regarding medical leaves of absence for students wishing to maintain F-1 status, particularly with regard to students who, upon entering the United States on the institution's Form I-20A-B, immediately request such a leave. There is no explicit INS guidance on the permissible length of a medical leave; however, an individual whose ongoing or open-ended medical condition will keep him or her out of school indefinitely might appropriately be advised to apply to INS for a nonimmigrant status to remain in the United States for the purpose of receiving medical attention rather than that of pursuing full-time study.

3. Teaching or research assistantship. To clarify its regulatory statement that "on-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study" [8 CFR 214.2(f)(6)(iii)], INS has declared that "students who are assigned teaching or research responsibilities pursuant to the terms of a scholarship or fellowship may carry a reduced course load. For example, a student enrolled in a master's program [may be] normally required to carry 9 semester hours [to be classified as full time]. However, it is a common practice among educational institutions to restrict students awarded teaching or research assistantships to 6 semester hours." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, pp. 55609-10]

4. Postdoctoral students or fellows. Postdoctoral students or fellows usually are not enrolled for student registration credit and therefore may not appear on course-enrollment lists. They are considered to be pursuing full courses of study, however, if they are carrying on the research and studies for which they were issued Form I-20A-B. [8 CFR 214.2(f)(6)(i)(A)] Postdoctoral students are permitted to carry on a combination of coursework and no more than 20 hours of research (or employment) per week while school is in session (see Section 4.5.2.1).

5. Graduate students who have completed formal course work. Graduate students who are preparing for comprehensive examinations or who are engaged in research on theses or dissertations may be registered to maintain matriculation only or enrolled for a number of credit hours less than that routinely defined as full time by the school, depending on the school's academic policies. A school official would have to make an individual determination (generally by consulting the student's academic adviser) as to whether such a graduate student is or is not pursuing a full course of study as defined in the regulations. [8 CFR 214.2(f)(6)(i)(A)]

6. Valid academic reasons for enrolling less than full time. An F-1 student may be considered to be pursuing a full course of study even though enrolled for less than a full course of study when authorized to do so by a DSO for the following reasons: "initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement." [8 CFR 214.2(f) (6)(iii)]

A student on the verge of failure may very well have been placed at an improper course level and, therefore, may be advised by a DSO to enroll for less than a full course of study without violating his or her status. A student who has generally maintained or exceeded the minimum number of credit hours over a period of time but who does not complete the minimum required number of credit hours in a particular term because of dropping a course due to imminent failure in the course, might be held to be carrying a full course of study during that term. In the case of *Mashi v. INS*, 585 F.2d 1309 (5th Cir. 1978), a federal circuit court held that one undergraduate student would not be deported for failure to maintain student status despite the student's failure to complete 12 credit hours in a given term. Since

INS interprets this case as having very limited applicability because of its special circumstances, students and school officials should be cautious in attempting to apply its principle too broadly.

7. Undergraduates completing programs during the current term. An undergraduate student who needs fewer than 12 hours to complete his or her program of study is considered to be pursuing a full course of study if the student enrolls in the number of credit hours necessary to complete the program in the final term. [8 CFR 214.2(f)(6)(i)(B)] (See paragraph (5) above and Section 4.5.2, paragraph (A) regarding graduate students.)

8. Practical training. A student on authorized practical training following completion of studies usually is not formally enrolled but is considered by INS to be pursuing a full course of study at the school where the studies were undertaken and whose DSO authorized or recommended the practical training (see Section 4.9.3.2). [8 CFR 214.2(f)(5)(i)] A student who is complying with the terms of practical training following completion of studies is not prohibited from enrolling in classes.

A student engaged in full-time curricular practical training may or may not be formally enrolled. Some institutions will require students engaged in cooperative education internships to register for the term; others may simply demand evidence that the curricular requirement has been fulfilled. A student engaged in part-time curricular or optional practical training would be required to enroll concurrently or be otherwise certifiable as exempt from the full-time course of study requirement (e.g., in the last term for an undergraduate degree).

9. A student at a school where school approval is withdrawn. Such students are permitted to complete the current term and, therefore, are considered to be pursuing a full course of study during that term (see Section 3.6.3).

Schools are advised to create an internal procedure by which situations 2 through 7 can be certified by a student's department head, academic adviser, physician, registrar, or other appropriate person.

4.5.2.3 Concurrent enrollment

An F-1 student at a community college, college, or university may enroll concurrently in two INS-approved schools provided that:

1. through the combined enrollment, the student is enrolled in the equivalent of a full course of study;

2. the student is enrolled in a degree program at one of the two schools;

3. attendance at the other school is with permission of a designated official at the school where the student is enrolled in a degree program;

4. the coursework at the other school is not avocational and will be accepted for fulfilling degree requirements;

5. a designated official at the school where the student is enrolled in a degree program has evidence of the student's enrollment in the equivalent of a full course of study;

6. the official who issues Form I-20A-B is in all respects responsible for all regulatory record-keeping and reporting requirements relating to the student; and

7. the name and the address of the other school where the student is enrolled are clearly stated in the remarks (item 9) on page 1 of the Form I-20A-B if a new Form I-20A-B is issued. A new Form I-20A-B is not needed for a student at the time he or she enters into concurrent enrollment. The next time a Form I-20A-B is needed for the student, it is the responsibility of the school at which the student is enrolled in a degree program to complete the form as provided in item 7 above.

Rarely will DSOs need to invoke INS-related procedures in addressing concurrent enrollment. Students enrolled for a full-time program at an INS-approved school do not require permission to take additional courses at another INS-approved school. Similarly, students accepted into accredited joint interinstitutional programs are so described from the outset by their initial Forms I-20A-B. Concurrent enrollment procedures address the special need of a student who wishes to take a particular course (or courses) at another INS-approved school and would be less than full time at his or her home school unless the course(s) were counted toward the student's overall course load.

INS regulations do not explicitly address concurrent enrollment and have not done so since the pertinent section of the 1985 Operations Instructions [OI 8 CFR 214.2(f)(14)] was excluded from the 1987 OI revision. Although INS has not addressed the matter of concurrent enrollment recently, it is clear that INS considers its tolerance of this option as an extraordinary effort to accommodate the special needs of some colleges and universities. DSOs responsible for students engaged in concurrent enrollment are well advised to document rigorously the academic rationale for pursuing this option.

4.5.3 Disclosure of information; criminal activity

F-1 students, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS, regardless of whether the information requested was material.

According to the regulations, "a condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by INS. Willful failure by a nonimmigrant to provide full and truthful information requested by INS (regardless of whether the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(c)(i) of the Act." [8 CFR 214.1(f)] Disclosure of student information by DSOs, and important implications under the Family Educational Rights and Privacy Act (FERPA), are discussed in detail in Section 3.5.2 of this Manual.

Students are also required, as a condition of their admission, to obey all federal and state laws that prohibit the commission of crimes of violence. "A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than 1 year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(1)(c)(i) of the Act." [8 CFR 214.1(g)]

4.6 PROCESSING F-1 STUDENT APPLICATIONS FOR IMMIGRATION BENEFITS

Students in F-1 status may be eligible for certain benefits pursuant to the immigration regulations. These benefits include on-campus employment, program extension, continuation in a new educational level at the same school, transfer of schools, and permission to engage in off-campus employment. The regulations published on 29 October 1991 (retroactively effective to 1 October 1991 for all benefits except on-campus work and practical training) and a 20 July 1992 interim regulation made substantial changes in the procedures to apply for and receive many of these benefits.

Some benefits (program extension, off-campus employment, curricular practical training, and optional practical training) require application on Form I-538 (rev. 8 July 1991, Certification by Designated School Official).

In the cases of program extension, off-campus employment under the pilot program, and curricular practical training, the Form I-538 is completed by the student, certified by the DSO, and forwarded to the INS Data Processing Center with any additional required documents to report that the student has met the specific conditions for program extension or employment authorization. Approval (certification) of the benefit is also noted on the student's Form I-20 ID by the DSO.

In the case of optional practical training either before or following completion of studies, the procedure begins similarly. The Form I-538 is completed by the student, certified by the DSO, and forwarded to the INS Data Processing Center to report that the student has met the specific conditions for recommendation for optional practical training. The DSO also notes the recommendation on the student's Form I-20 ID. To complete the process of obtaining employment authorization for optional practical training either before or following completion of studies, the student uses the endorsed Form I-20 ID as a supporting document to Form I-765 (Application for Employment Authorization), which is filed with the INS office having jurisdiction over the student's place of residence. Submission of Form I-538 is not required.

In the case of off-campus employment based on severe economic hardship, the Form I-538 is completed by the student and certified by the DSO to indicate that the student has met the necessary conditions to apply for this benefit. The student submits the Form I-538, his or her Form I-20 ID, and Form I-765 with fee to the INS office having jurisdiction over the student's place of residence.

The action taken by INS in reviewing applications for optional practical training and employment based on severe economic hardship is known as an adjudication decision. Approval of these applications results in issuance of an Employment Authorization Document (EAD), Form I-688B. If the application is denied, the denial is noted by an INS officer on the student's Form I-20 ID, which is returned to the student with Form I-541 notifying the student of the decision. The INS district director may, at his or her discretion and upon a DSO's request, inform the DSO of the decision by means of a copy of Form I-542 (for approval) or Form I-541 (for denial).

Adjudications are made in the name of the INS district director. Some applications may be "remoted" by the district director to a border or airport post, in which case the adjudication is made by a border or airport officer in the name of the district director.

An adjudication decision on a Form I-765 application may not be appealed. [8 CFR 214.2 (f)(9)(ii)(F)(2), 8 CFR 214.2(f)(12)] See Section 14.3.2 for procedural recourse in the face of a denial.

On-campus employment, within certain limitations, is a benefit inherent to F-1 classification. No application or request is required from students who are in lawful F-1 status and wish to work on campus.

Other benefits (continuation in a new educational level at the same school and transfer to another school) are obtained when the student meets specific conditions and makes a request of a DSO in accordance with certain procedures. The certification of the benefit is noted on Form I-20 ID by the DSO, who is required to notify the INS Data Processing Center and, in the case of a transfer, the former school. This process is known as notification.

The following sections (4.7, 4.8, and 4.9) discuss benefits available to F-1 students and the procedures to be followed in obtaining them.

4.7 PROGRAM EXTENSION

4.7.1 Eligibility

An F-1 student is admitted to the United States for "duration of status," that is, to complete an educational program. However, if a student must remain in an educational program beyond the date originally estimated for completion of the program (as stated by item 5 on the initial Form I-20A-B issued to begin the program) the student must comply with INS procedures for program extension. Application must be made to the DSO "in a 30-day period before the completion date [item 5] on Form I-20A-B." [8 CFR 214.2(f)(7)(i)] An F-1 student is eligible for program extension if he or she (1) has "continually maintained status" and (2) delay in completion is "caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses." The regulations go on to state that "delays caused by academic probation or suspension are not acceptable reasons for program extension." [8 CFR 214.2(f)(7)(iii)] A student who fails to complete his or her program within the time prescribed in item 5 of his or her Form I-20A-B and cannot meet the eligibility criteria for program extension is considered out of status and must apply for reinstatement to student status (see Section 4.10). [8 CFR 214.2(f)(7)(iv)]

Special rules apply to students who were in status within their grace periods on 1 October 1991. INS requires no specific transition-related action on the part of either these students or their DSOs. These students are eligible for new Forms I-20A-B with completion dates reflecting their 12-month grace period. Their newly specified completion dates are used to determine whether and when they must apply for program extension according to the procedures described above. Although INS does not require DSOs to issue new Forms I-20A-B to these students, most DSOs will want to use the opportunity to specify for their students the termination date of their grace periods. Naturally, a student within a grace period wishing to travel abroad and reenter will require a new Form I-20A-B for that purpose (see Section 4.11). Should these students unwittingly fall out of status for failing to apply for a program extension within the 30-day window (because they believed they had an unwritten grace period), INS permits these students to apply for program extension if they are otherwise eligible. [INS Cable, CO 214 F-C, 10 June 1993] This exception will apply to very few students.

INS would consider either suspension or a break in a student's F-1 status, as determined by the DSO, as disqualifying for purposes of program extension. The fact that a student has been placed on academic probation during his or her program is less clearly determinative and may require the DSO to assess the student's overall progress, performance, and seriousness of purpose before concluding ineligibility.

The program-extension process does not require an INS adjudication or a formal authorization of extension of stay. It is a process whereby the DSO verifies eligibility criteria and notifies the INS Data Processing Center of a student's new expected completion date. This information is used to update INS's student database.

A student who will be abroad during the prescribed 30-day application period for program extension may accomplish the procedure alternatively through his or her reentry to the United States. Such a student should obtain a Form I-20A-B executed as in Section 4.7.2 immediately below, with two modifications: block 3(b) ("Continued attendance at this school") should be checked, and in the Remarks section (item 9), "Pursuant to 8 CFR 214.2(f)(7)(iii), program extension is granted" should be entered.

4.7.2 Procedures

To effect a program extension, the student must:

1. obtain a Form I-20A-B from the authorized school of attendance bearing the student's Form I-20 ID (Admission) number. It is suggested that the Form I-20A-B be executed as follows: check block 3(e) ("Other") and specify "for program extension," and update item 5 to reflect the new expected completion date (which may include a grace period of up to 1 additional year);
2. complete item 11 of the Form I-20A-B;
3. complete Section A, questions 1 through 6, of Form I-538; and
4. submit the completed Forms I-20A-B and I-538 to the DSO within the 30-day period before the expected completion date noted on the initial Form I-20A-B for the student's current program or level.

The DSO at the school the student is authorized to attend must:

1. attach p. 3-4 of the new Form I-20A-B to the student's old Form I-20 ID; and
2. certify Section B of Form I-538; on the reverse side of the form, note the following, "Pursuant to 8 CFR 214.2(f)(7)(iii), program extension is granted." [INS-NAFSA meeting, 13 November 1991]
3. attach the Form I-538 to page 1-2 of the student's new Form I-20A-B, and send both to the INS Data Processing Center no later than 30 days after approving the program extension. No confirming letter need be attached to the INS Data Processing Center mailing. No action is required for spouses or children in F-2 status.

The regulations governing program extension explicitly require documentation only in the case of illness. In extenuating cases not related to illness, however, many DSOs will want the student's academic department or academic adviser to provide a written certification (1) attesting to the valid academic reasons why the student's program could not be completed within the allotted time, and (2) specifying an expected date of completion of the student's program. The DSO will also want to note that INS's list of academic reasons for delay is exemplary and does not purport to be exhaustive.

The program extension notification process is a marked improvement over the previous procedures. The 1987 version of the student regulations required formal application to INS if a student remained in F-1 status for 8 consecutive years or, based on a formula that permitted a 6-18 month grace period, exceeded the expected date of completion noted on the student's initial Form I-20A-B. INS authorization of extension of stay was reflected by the following Form I-20 ID notations: (1) for 8-year extension, "8 Year Extension of Stay Approved [date of action and officer's signature]", and

(2) for extended time within a program or level, "Program Extension of Stay Approved [date of action and officer's signature]." DSOs will see some variations of these prescribed formats.

4.7.3 Continuing in a different educational level at the same school

Although this is not, strictly speaking, a program extension or extension of stay, the student must comply with certain procedures to remain in status when continuing from one educational level to another at the school the student was last authorized to attend. [8 CFR 214.2(f)(5)(ii)] The transition process is accomplished in the following manner. The student must:

1. obtain Form I-20A-B for the new educational program;
2. enroll in the new educational program in the first term following completion of the previous educational program or vacation; and
3. complete item 11 of Form I-20A-B and submit it to a DSO no later than 15 days after beginning classes.

The DSO must:

1. check block 3(e) ("Other") of the Form I-20A-B and note that "student is moving from ______ program to ______ program at the same institution" [INS letter to NAFSA, 22 May 1987];
2. submit the Form I-20A-B to the INS Data Processing Center within 30 days of receipt from the student in order to notify INS of the change of program; and
3. return to the student the Form I-20 ID.

The regulations do not require an INS adjudication or a formal authorization to change educational levels. Regulatory language prescribes that "transition to [a] new educational level is accomplished according to transfer procedures." [8 CFR 214.2(f)(5)(ii)] Thus, it follows that—as in the INS transfer procedure—completion of this procedure within 45 days of enrollment, irrespective of when within this period a student initiates the procedure, satisfies the intent of the regulations (see Section 4.8.2).

A student also may accomplish the procedure for continuation in a new program at the same school through his or her reentry to the United States from abroad. Such a student should obtain a Form I-20A-B executed for the new program. The DSO should check blocks 3(b) ("Continued attendance at this school") and 3(e) ("Other"), adding the above-mentioned explanation: "student moving from ______ program to ______ program at the same institution." A student following this alternative is presumed to be bound by the same application deadlines as if applying in the United States.

4.8 TRANSFER OF SCHOOLS

4.8.1 Eligibility

An F-1 student "who is maintaining status may transfer to another Service-approved school by following the notification procedure ... An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement." [8 CFR 214.2(f)(8)(i)] There is no specified minimum period of time the student must be enrolled at the school he or she was last authorized to attend, although it is clear that the student must have attended that school for at least some period of time. The DSO at the new school should follow the transfer procedures unless he or she knows the student is not eligible to effect a transfer. The regulations do not require an INS adjudication or a formal authorization to transfer.

The matter of establishing attendance at the previous school may be problematic when a student making a first-time entry wishes to attend an institution other than the one that issued the Form I-20A-B the student used to enter the United States. Although not in the regulations, this issue was a subject of the 28–29 September 1988 quarterly meeting between NAFSA and INS, reported in the November 1988 *Government Affairs Bulletin (GAB)*. The *GAB* report noted:

In order for a student to use [the school transfer procedure], the institution which has issued the original I-20 must confirm full-time attendance. Under paragraph 4 of the school transfer procedure in the December 1987 OIs, "verification of a student's attendance in class is synonymous with that of a student's registration or enrollment." [Draft OI 8 CFR 214.2(f)(8)(iv), 29 October 1991] Each institution may establish its own criteria as to what constitutes registration or enrollment.

Elsewhere in the same issue, the *GAB* describes among the "circumstances satisfying the verification of a student's attendance ... student reports to the international student office, providing address and completing reports required by that office during the orientation period before classes begin."

Circumstances such as these warrant close consultation between the receiving school and the school whose Form I-20A-B was used to enter the United States. The receiving school must ascertain whether the student has met the "reporting requirement" and, if so, whether the "old" school objects to the student taking up attendance at the "new" school. The DSO at the receiving school should be sensitive to the institutional policies of the school that issued the Form I-20A-B used on entry, and the DSOs at both schools will want to be sensitive to the student's academic aspirations. When discussion concludes that the student is not eligible for the school-transfer procedure, the student should be advised either to remain at the school to which he or she was originally destined or to seek reinstatement to attend the preferred school (see Section 4.10).

4.8.2 Procedures

To effect a transfer of schools, the student must:

1. inform the school the student is currently authorized to attend of his or her intention to transfer;

2. obtain Form I-20A-B from the school he or she plans to attend in accordance with the eligibility provisions of 8 CFR 214.3(k) (see Section 4.4);

3. enroll in the new school in the first term after leaving the previous school or the first term after vacation (this requirement is implicit if the applicant is to meet the eligibility criterion of maintaining status);

4. complete item 11 of Form I-20A-B and submit the form to a "designated school official on campus within 15 days of beginning attendance at the new school" [8 CFR 214.2(f)(8)(ii)]; and

5. submit his or her current Form I-20 ID to a DSO at the new school. [This item is not explicitly required under INS procedures for transfer of schools; it is implied by the requirement of maintaining a photocopy of the student's Form I-20 ID (see Section 3.5.2) and the need to add the student's Form I-20 ID (Admission) number to the new school's Form I-20A-B.]

An F-1 student transferring within a school system must follow these procedures unless both schools have identical school codes.

Federal regulations provide that, upon receipt of the Form I-20A-B, the DSO at the new school must:

[1] note "transfer completed on (date)" on the student's [new Form] I-20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance [also note the student's old Form I-20 ID (admission) number in the appropriate space on the new Form I-20A-B];

[2] return the [new and old Forms] I-20 ID to the student;

[3] submit the [Form] I-20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

[4] forward a photocopy of the Form I-20A-B School Copy to the school from which the student transferred. [8 CFR 214.2(f)(8)(iii)]

Failure of the DSO to follow these procedures after the student has complied with his or her responsibilities with regard to transfer procedures constitutes cause for withdrawal of a school's approval to enroll F-1 students (see Section 3.6.1). [8 CFR 214.4(a)(l)(iii)]

According to the November 1988 *Government Affairs Bulletin*, an INS official "indicated that completion of ... the [above] process within 45 days satisfies the intent of the procedure, which is to keep the [INS] student data file current."

A student also may accomplish the procedure for school transfer through his or her reentry to the United States from abroad. Such a student should obtain a Form I-20A-B executed by the new school for the new program. The new school's DSO should check blocks 3(a)-"Initial attendance at this school" and 3(c)-"School transfer," adding the name of the student's previous school. A student following this alternative is presumed to be bound by the same application deadlines as if applying in the United States.

An F-1 academic student may attend another school during an authorized vacation period without applying for transfer, provided he or she is eligible and intends to register for the next term at the authorized school.

The October 1991 regulations governing transfer of schools contain modest but favorable changes in the 1987 regulations. The most positive change is that receiving schools no longer need be concerned about the Form I-20A-B completion date for a student's previous program, even if the student is transferring at the same academic level and for the same program of study. The receiving school is free to assign a new completion date based on its own institutional policy (see Section 4.3.6).

INS has trimmed its transfer regulations considerably but continues to require the DSO at the receiving school to establish an incoming student's lawful status. Specifically, the October 1991 regulations require that an incoming student be "maintaining status." [8 CFR 214.2(f)(8)(i)] "Maintaining status" is defined elsewhere in the regulations as "making normal progress toward completing a [full] course of study." [8 CFR 214.2(f)(5)(i)] Accordingly, the 1991 regulations require that a student be maintaining status as defined by the previous school's DSO, the de facto criterion broadly applied under the 1987 Operations Instructions. Moreover, INS also has carried forward the prescription that "the DSO may adopt whatever method is most expedient" to confirm a transfer student's status. [Draft OI 8 CFR 214.2(f)(8)(iv), 29 October 1991]

Many DSOs will find it expedient to review relevant documents in a transfer student's possession in a good-faith effort to ascertain whether the student was maintaining status at his or her previous school. Much may reasonably be inferred from these documents. For example, INS relies on Form I-20 ID certifications for purposes of F-1 student reentry to the United States. If a transfer student were to present a Form I-20 ID recertified the term before arriving at the new school's campus, it would appear unnecessary for a DSO to apply a stricter standard than that followed by INS itself—unless the DSO knows the student to be ineligible for transfer. Alternatively, DSOs may wish to ask transfer students to present transcripts of their attendance at previous schools. It is hoped that DSOs will not find it necessary to besiege one another with institutionally generated "status verification forms" that only add to the immigration paper blizzard.

4.8.3 Student not pursuing a full course of study

If a student has not pursued a full course of study at the school last authorized to attend, he or she is not eligible for transfer of schools but must apply for reinstatement to student status (see Sections 4.8.1 and 4.10). [8 CFR 214.2(f)(8)(i)]

4.8.4 Transfer of schools after leaving the United States

A student may be readmitted to the United States to attend a school other than that specified in the student's visa, regardless of whether the transfer procedures have been followed prior to departure. If the transfer procedures have not been followed prior to reentry, the student must present both a new Form I-20A-B from the school to which he or she intends to transfer and all Forms I-20 ID the student has been issued. [8 CFR 214.2(f)(4)(ii) and 8 CFR 214.2(f)(2)] The student may expect the immigration officer at the port of entry to retain the new Form I-20A-B and return the new Form I-20 ID endorsed with an INS stamp reflecting admission to the United States. The INS officer is instructed to forward the new Form I-20A-B to INS's Data Processing Center to update the student's record (see Sections 4.4.1.2 and 4.11.2).

4.9 EMPLOYMENT

Dramatic changes in F-1 student employment options were produced by (1) the Immigration Act of 1990, which largely became effective 1 October 1991; (2) the October 1991 revision of the F-1 regulations (the employment-related provisions of which became effective 29 October 1991); and (3) a subsequent July 1992 interim rule reinstating work options eliminated in the October 1991 rule. The resulting regulations (1) promulgated a 3-year pilot program for part-time, off-campus employment based on the unavailability of U.S. workers; (2) merged precompletion and postcompletion practical training into one 12-month category termed "optional practical training"; (3) modified criteria for on-campus employment, employment based on severe economic hardship, curricular practical training, and optional practical training; and (4) promulgated use of the Employment Authorization Document (EAD), Form I-688B.

"Employment" means the rendering of services on either a part-time or full-time basis for compensation, financial or otherwise, including self-employment. Although investing is not considered employment, working in a business in which a student is an investor is considered employment. [*Wettasinghe v. U.S. Department of Justice*, 702 F.2d 641 (6th Cir. 1983)] An F-1 student may accept employment or engage in business only under certain conditions and, in the cases of optional practical training and employment based on severe economic hardship, only after securing INS approval.

The regulations divide employment of F-1 students into several categories: on-campus employment, off-campus employment, practical training, and employment sponsored by a certain type of international organization.

Permission to accept any employment, regardless of whether that employment is part of an academic program, is automatically suspended if the secretary of labor certifies to INS that a strike or other labor dispute involving a work stoppage is in progress at the student's place of employment. [8 CFR 214.2(f)(14)]

Special provisions pertain to citizens of the Republic of the Marshall Islands and the Federated States of Micronesia. Citizens of these countries, including F-1 students, are permitted to be employed in the United States. They must nevertheless apply to INS on Form I-765 (without fee) for an Employment Authorization Document evidencing their eligibility to work.

4.9.1 On-campus employment

An F-1 student may accept employment at the institution he or she is authorized to attend without prior approval from INS, provided the student is enrolled in a full course of study and the employment will not displace a U.S. resident. [8 CFR 214.2(f)(9)(i)] In this context "displace a U.S. resident" means that an on-campus employer may not remove a U.S. worker to hire a foreign student. However, an on-campus employer does not need to verify that there are no U.S. workers available before hiring a foreign student.

On-campus employment primarily means work performed on the school's premises. It includes employment with "on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria." [8 CFR 214.2(f)(9)(i)] It does not include employment on the school's premises for a commercial firm that is not providing on-campus services for students, for example, at a construction site for a new school building.

It may also include work "at an off-campus location which is educationally affiliated with the school.... In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded projects at the post-graduate level ... [and] the employment must be an integral part of the student's educational program." [8 CFR 214.2(f)(9)(i)] In the preface to the October 1991 regulations, INS elaborates on its conception of "educational affiliation by contract." The Service acknowledges that expansion of the definition of on-campus work was a response to complaints "that many professors have contract-based research grants which are not payable through the educational institutions. Including this type of 'contractually-based educational affiliation' would enable graduate students to conduct research under the supervision of their professors. Noting the similarity in the above-described employment and a graduate research assistantship, the Service adopted this suggestion." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55609]

INS has provided an example of on-campus work under what it has coined the "extended campus" concept:

The anthropology department of university X has entered into an agreement with the Museum of Natural History in city Y to conduct a joint research program on colonial Americans. Students of anthropology from university X who are part of the research project attend classes and/or work on the research project as research assistants at the museum.... These research assistants are considered to be engaging in on-campus employment in conjunction with their educational program at a location that is educationally related to the school. [Draft OI 8 CFR 214.2(f)(9)(i), 29 October 1991]

In this example, the students may be paid by either the museum or the university.

On-campus work is limited to 20 hours per week while school is in session. Such employment may be full time during vacation periods for students who are eligible and intend to register for the subsequent academic term. There is no exclusion from the overall 20-hour-per-week ceiling for work undertaken pursuant to a scholarship, fellowship, assistantship, or postdoctoral appointment. Although not required by regulations, DSOs may wish to endorse the I-20 on page 4 indicating on-campus employment at an off-campus site pursuant to 8 CFR 214.2(f)(9)(i).

On-campus employment is not permitted after completion of a course or courses of study, except employment authorized for practical training, unless the student has been "issued a Form I-20A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and ... intends to enroll for the next regular academic year, term, or session at the institution which issued Form I-20A-B." [8 CFR 214.2(f)(9)(i)] For example, a student who completes a bachelor's degree in May and has been issued a Form I-20A-B to begin a master's program in September may work on campus over the intervening summer. If the new Form I-20A-B is from a different school, the student may engage in on-campus work on the campus of the new school before classes begin or on the campus of the old school until the new school's classes begin.

4.9.2 Off-campus employment

An F-1 student may be authorized to work off-campus while school is in session either through the pilot off-campus employment program or based on severe economic hardship (off-campus employment pursuant to practical training is discussed in section 4.9.3). In either case, the student must be enrolled in F-1 status for 1 full academic year and be in good academic standing. Employment is limited to part time (20 hours per week or less) while school is in session and full time during holidays or school vacations. Employment authorization is automatically terminated if the student ceases to maintain lawful status.

4.9.2.1 Pilot off-campus employment program

The 1990 Act's student-employment pilot program provisions—which extend to 30 September 1996—prescribe that an F-1 student is eligible for part-time off-campus employment without prior approval of INS provided (1) the student is in "good academic standing as determined by the DSO," (2) the student has been "in F-1 status for 1 full academic year" [PL 102-232, 12 December 1991, and PL 103-416, 25 October 1994], (3) the employer wishing to employ the F-1 student has filed a wage and recruitment attestation for the position offered to the student with the Department of Labor (DOL) and the DSO of the school the student is authorized to attend, and (4) the student's employment is limited to 20 hours per week while school is in session (employment may be full time when school is not in session).

An eligible student may apply for off-campus employment authorization to the DSO of the school he or she is authorized to attend. The DSO may authorize permission to work "in 1-year intervals" for the period the student is expected to maintain student status or until 30 September 1994, whichever is earlier, and may renew the authorization "only if the student is maintaining status and good academic standing." Employment may begin only after the student's Form I-20 ID has been properly endorsed by the DSO. [8 CFR 214.2(f)(9)(ii)(A) and (E)] At press time, the regulations have not been changed to reflect the extension of the pilot program until 1996. Presumably work may be authorized in 1-year intervals until 30 September 1996.

An employer must file a wage and recruitment attestation within the 60 days following a required 60-day recruitment period. The employer may hire F-1 students within 90 days of the close of recruitment. In its simplest form, the sequence might be 60 days of recruitment, followed by the filing of an attestation in the next 60 days, followed by the hiring of an F-1 student in the last 30 days (see Sections 4.9.2.1.2 and 4.9.2.1.2.3).

The student's employment authorization is specific to a particular job, employer, and locality, and automatically terminates if the student fails to maintain F-1 status or the employer is disqualified from participating in the pilot program. There is no formal mechanism for enforcing termination of employment upon loss of F-1 status. The INS states that "DSOs are not responsible for monitoring a student's authorized off-campus employment beyond verifying that the student is maintaining good academic standing" at the time of the student's application for initial or renewed employment authorization. [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, pp. 55609-10] However, upon appropriate notification, DSOs are responsible for advising students that they must terminate employment when DOL invalidates the labor attestation on which their employment authorization is based (see Section 4.9.2.1.2.3). To fulfill this responsibility, DSOs will need to track students associated with particular employment attestations. A simple tracking system might make use of a folder for each employer; DSOs authorizing employment would file a photocopy of a student's annotated Form I-20 ID in the folder corresponding to the student's employer.

Students who violate the terms of their authorized employment are considered out of status and also will be subject to the disqualifying provisions of 8 CFR 245.1(b) should they later seek adjustment of status to permanent residence. Violating employers fall subject to the employer-sanction provisions of 8 CFR 274a.

Multiple employment is permissible provided that (1) aggregate employment does not exceed 20 hours per week (including both on- and off-campus employment) while school is in session and (2) each employment situation is individually authorized. Employment authorization is valid for the period certified by the DSO (up to 1 year) while a student remains in status. Authorization does not terminate when a student transfers to another school, provided the student continues employment with the same employer in the same location and capacity; such a student may work until the expiration of his or her work authorization. However, to renew work authorization, such a student must reestablish eligibility for off-campus work authorization with the new school's DSO. [Draft OI 8 CFR 214.2(f)(9)(ii)(E)]

To be eligible for employment authorization, a student must have been specifically in F-1 status for 1 academic year. A student may count his or her annual vacation period toward the academic year in-status requirement. For example, a student beginning full-time studies on 10 January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester would be eligible for employment on 10 October—9 months from 10 January.

The same student who has been temporarily absent from the United States for 5 months or less during the first academic year is considered to have satisfied the 1-year in-status requirement and is eligible for employment authorization.

An institution or school system that has an 8-month academic year or trimester calendar satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for employment.

Part-time off-campus employment authorization has two components, reflecting the need for both the employer and student to establish eligibility under the pilot program: (1) acceptance of the employer for purposes of filing an attestation, which establishes the employer's eligibility, and (2) certification by the DSO, which establishes the F-1 student's part-time work authorization. Jurisdiction over attestation procedures has been assigned to DOL, which published implementing regulations on 6 November 1991 as an interim final rule retroactive to 1 October 1991. [20 CFR 655, *Federal Register*, 6 November 1991, pp. 56860-80] Jurisdiction over F-1 student employment lies with the attorney general [Act, 221(a)], who has delegated this authority to INS. It is hoped that the DSO's formal role in part-time off-campus employment authorization will be limited and straightforward.

DOL has engendered a significant jurisdictional issue in its interim final regulations. In (1) requiring that DSOs notify DOL of an employer's failure to provide the DSO with an "accepted for filing" attestation copy, and (2) prescribing that DOL notice of employer disqualification—either directly or through publication in the *Federal Register*—is "sufficient" for DSOs to terminate the employment authorization of an implicated F-1 student, DOL appears, at best, to have muddied the waters and, at worst, to have usurped INS authority over the terms of lawful employment (see Section 4.9.2.1.1). The absence of express sanctions for failing to notify DOL with regard to the first point is somewhat reassuring. DSOs will be more concerned, however, with the implications of the prescription under the second point. DOL's regulations are operational and are addressed below, with controversial elements identified.

4.9.2.1.1 Procedure for off-campus employment under the pilot program. A student who is the beneficiary of a wage and recruitment attestation requests off-campus employment authorization by completing Section A of Form I-538 (rev. 8 July 1991 or later), questions 1 through 6, and submitting the form to the DSO. By endorsing the Form I-538, the DSO certifies (1) receipt of the prospective employer's attestation (Form ETA-9034, Attestation by Employers for Off-Campus Work Authorization for F-1 Students), (2) that the student has been in F-1 status for at least 1 academic year, and (3) that the student is in good academic standing as defined by the DSO.

The DSO's authorization is noted on the student's I-20 ID and must conform to the following wording, "part-time employment with (name of employer) at (location) authorized from (date) to (date)." [8 CFR 214.2(f)(ii)(E)] The DSO must forward the endorsed form I-538 and an attached copy of the labor attestation to the INS Data Processing Center. The DSO may also wish to give the student an informational copy of the attestation so that the student may know precisely which job titles or classifications are appropriate to his or her employment authorization.

The beginning date of authorized employment corresponds to the date of DSO approval. The ending date may extend for 1 calendar year or for the period the F-1 student maintains eligibility to work under duration of status in a study activity, whichever ends earlier. Renewal of employment authorization is similarly governed, provided that in no case does authorization extend beyond 30 September 1996, the expiration date of the student employment pilot program.

Multiple attestation-based employment is consistent with both DOL and INS regulations. The DSO should note employment authorization on the student's Form I-

20 ID for each employer, location, or position.

The DSO's obligation to be in receipt of a labor attestation is satisfied by a photocopy of Form ETA-9034. The regulations prescribe that the employer will "send" a copy of the attestation to the DSO but do not specify the method of transmittal. DSO's may anticipate employers faxing attestations or providing them to students for hand-delivery, both of which methods appear acceptable. [20 CFR 655.900(b)(3)(ii)]

The DSO may accept either a copy of an attestation that has been filed simultaneously with DOL, or a copy of an attestation that has "ETA's acceptance indicated thereon.... Where the employer has chosen to file the attestation simultaneously with DOL and the DSO ... the employer shall provide a copy of the accepted attestation to the DSO within 15 days after receiving the accepted attestation from DOL." [20 CFR 655.900 (b)(3)(iii)] In a controversial requirement, DOL's regulations state that "the DSO shall notify ETA if the educational institution has not been provided with a copy of the attestation indicating that it was accepted for filing by ETA within 90 days from the date that the attestation was filed with the DSO." [20 CFR 655.940(c)(3)] DOL's requirement is directive, but failure to comply carries no explicit penalty; in any event, it is difficult to conceive how DOL would monitor compliance. DSOs are also required to refer to the *Federal Register* for a twice-yearly listing of disqualified employers, presumably both before authorizing employment and as an ongoing verification of continued employment eligibility, according to another controversial DOL provision. [20 CFR 655.910(c)(ii)] Furthermore, when an employer has been disqualified as the result of enforcement proceedings, it is DOL's position that DOL notice of such disqualification, "upon receipt by the school, shall constitute sufficient notice for the DSO to revoke work authorization(s) and refuse to issue new work authorization(s) for employment of F-1 students by the employer." [20 CFR 655.1055(b)(2)] As of September 1994, one employer had been disqualified from the program.

The DSO does not evaluate attestations; that responsibility lies with the Department of Labor, whose procedures provide that DOL will notify INS should an attestation be deemed unacceptable. It is clear that DOL regulations place on INS the burden of notifying the DSO that the attestation underlying a student's employment authorization has been found unacceptable and that the student is required to discontinue employment with the related employer. A student who discontinues employment on receipt of such a notification will not be penalized for the employer's failure to satisfy attestation requirements. Less clear is by whom and to what extent DSOs will be held responsible for monitoring the *Federal Register* and DOL notices of disqualification.

4.9.2.1.2 Attestation. The purpose of the attestation procedure is to "safeguard the job opportunities and wages of U.S. workers." [Supplementary Information to 20 CFR Part 655, *Federal Register*, 6 November 1991, p. 56860] The attestation process is administered by the DOL's Employment and Training Administration (ETA). Complaints and investigations regarding attestations are administered by DOL's Employment Standards Administration (ESA).

Employers wishing to hire F-1 students for part-time, off-campus employment, either related or unrelated to the student's studies [PL 102-232, 12 December 1991], are required, within 60 days of the close of their recruitment efforts, to file Form ETA-9034 with the appropriate DOL regional office attesting to unsuccessful efforts at recruiting domestic workers for the position or positions in question and that the wages to be paid the F-1 student are consistent with DOL's wage guidelines. "The employer may file an attestation for [1] a single position, or [2] for multiple positions in the same occupation, or for [3] [multiple positions] in multiple occupations, provided that all positions are located within the same geographic area of intended employment." [20 CFR 655.940(c)(2)]

Attestations are valid effective on the date "received and date-stamped by the [DOL] Regional Certifying Officer" and continue valid until 30 September 1994, unless the employer is disqualified by DOL. At press time, DOL had not yet determined whether attestations approved prior to 30 September 1994 would remain valid until 30 September 1996.

During the validity period of an attestation ... the attesting employer may hire, during the 90-day period following the last day of its 60-day recruitment period, or at any time [after the initial 60-day recruitment period] if the employer has placed an "open job order" with the [State Employment Security Agency (SESA)] ... F-1 students as needed from as many educational institutions as it deems necessary to fill the positions specified in the attestation, at the location(s) specified in the attestation, and at the "required wage rate." [20 CFR 655.940(h)]

Employers with an ongoing need to fill vacancies will find that an open job order with the local State Employment Security Agency will greatly facilitate their ability to hire F-1 students. Employers with intermittent or seasonal employment needs will require more careful planning to ensure that recruitment requirements are satisfied at the point when they wish to begin hiring F-1 students.

An employer may withdraw an attestation at any time, provided the attestation is not under investigation. The employer must make a written request to the regional certifying officer with whom the attestation was originally filed; it is also the "employer's responsibility to promptly notify the DSO at each school where F-1 students it employs are enrolled." [20 CFR 655.940(i)]

The principal components of attestation are the (1) 60-day recruitment procedure and its documentation,

(2) prevailing and actual wage determinations and their documentation, (3) filing procedure, (4) record-keeping requirements, and (5) penalties for false attestation.

4.9.2.1.2.1 Recruitment procedure and its documentation. "An employer seeking to employ an F-1 student shall attest on Form ETA-9034 that it has recruited for at least 60 [consecutive] days for the position(s) and that a sufficient number of U.S. workers were not able, qualified, and available for the position(s)." [20 CFR 655.940(d)] The employer may establish compliance with this requirement by (1) posting a job order for the position with the local SESA office within the area of intended employment for 60 consecutive days, and (2) posting a notice of the position vacancy at the proposed work site for 60 consecutive days. The corresponding attestation may be filed at any time within the 60 days following the employer's recruitment period.

Employers anticipating an ongoing need to fill vacancies may maintain an open job order with the local SESA office for the relevant position or positions for the period of anticipated need or until 30 September 1996. An employer who has satisfied the initial 60-day SESA and work-site posting requirement and engages in continuous SESA posting remains in compliance with the recruitment requirement throughout the life of the attestation. Employers who file an attestation but do not engage in continuous recruitment need not file a new attestation should they later wish to hire for the same position, even if more than 90 days have passed since the previous recruitment period. If hiring is contemplated for position(s) described in an employer's previous attestation, the employer need only refresh the recruitment process by again recruiting for 60 days through postings at the work-site and SESA office before offering the position(s) to F-1 students.

Employers must retain documentation of the particulars of both the State Employment Security Agency and work-site postings. In addition, the results of the recruitment efforts must be recorded by the employer "in a contemporaneous written summary" for each position for which an attestation was filed by the employer. As stated in Appendix A to Subpart J to 20 CFR 655 (a)(3)(iv):

> [The] summary should include: (A) The number of job openings in each occupation included in the [attestation]; (B) The number of U.S. workers and F-1 students that applied for each position; (C) The number of U.S. workers that were hired; (D) The number of F-1 students that were hired; (E) The number of U.S. workers that were not hired; and (F) The lawful job-related reason(s) for which each U.S. worker was not hired. [20 CFR 655, Appendix A to Subpart J, (a)(3)(iv)]

4.9.2.1.2.2 Prevailing wage determinations, actual wage determinations, and their documentation. Employers must attest that they will pay F-1 students the "required wage rate," which DOL defines as the "higher of: (1) the actual establishment wage rate for the occupation in which the F-1 student is to be (or is) employed, or; (2) the prevailing wage rate (adjusted on an annual basis) for the occupation in which the F-1 student is to be (or is) employed in the geographic area of intended employment." [20 CFR 655.920] Accordingly, an employer is required to ascertain both actual work-site wages for "similarly employed" workers and prevailing wages in the geographic area for the occupation in question. DOL defines "similarly employed" workers as employees "having substantially comparable jobs." The employer must pay these employees, whether domestic workers or F-1 students, the "required wage rate." [20 CFR 655.940(e)(1)]

Documentation that satisfies the wage element of the attestation procedure will include customary payroll records relating to the F-1 student employee's earnings, hours worked, and payroll deductions—all required to establish the actual wages paid to employees in the occupation—and one of the following to establish the prevailing wage: (1) a prevailing wage survey published by an authoritative source within 2 years of the attestation filing, or (2) a prevailing wage finding from the local SESA. [20 CFR 655, Appendix A to Subpart J, (b)(4) and (5)] The employer is required to maintain and annually update prevailing wage documentation for all occupations covered by any attestation for the validity of the attestation, or until the attestation is withdrawn. Moreover, "the employer's obligation to pay the 'required wage rate' for the positions named in the attestation shall continue throughout the validity period of the attestation." [20 CFR 655.940(e)(1)] The F-1 student's wages must be adjusted if they fall below those of "similarly situated" workers or the rate of pay determined in annual prevailing wage updates.

4.9.2.1.2.3 Filing procedure. An attestation on Form ETA-9034 must be filed with the DOL regional office having jurisdiction over the work site within 60 days of the conclusion of the employer's recruitment period. The Form ETA-9034 (one signed original and one copy) may be submitted to DOL by mail, private carrier, or facsimile transmission and must be signed by the employer or the employer's hiring representative. The employer may at the same time send an exact copy of the ETA-9034 to the DSO of the institution at which the employer seeks to hire F-1 students. The attestation satisfies the DSO's documentation requirement even if it has not been accepted for filing by DOL. However, if the employer is in possession of an attestation that has been accepted for filing by DOL (evidenced by a DOL stamp to that effect), the employer is required to send a copy of the accepted attestation to the DSO. [20 CFR 655.940(b)] When an employer files simultaneously with DOL and the DSO, the employer must provide the DSO a copy of the DOL date-stamped attestation within 15 days of receiving the accepted attestation from DOL (see Section 4.9.2.1.1).

When the DOL regional certifying office receives an employer attestation, it makes no determination of the bona fides of the attestation. The sole reasons for not accepting an attestation for filing are: (1) failure to complete or sign Form ETA-9034 or (2) previous disqualification from participating in the F-1 off-campus, part-time work pilot program. The DOL will return an incomplete attestation and allow an employer 15 days to complete and return the attestation. If the attestation is not resubmitted within the 15-day period, DOL will notify INS to advise affected DSOs to terminate off-campus employment authorization based on the unaccepted attestation. [20 CFR 655.940(f)] Since the names of student employees will not be listed on attestations, the implication is that DSOs will need to track students associated with particular employment attestations (see Section 4.9.2.1).

An accepted attestation is valid for the duration of the F-1 student-work-authorization program, unless it has been withdrawn by the employer or invalidated by DOL. During the period of its validity, the employer may hire as many F-1 students from as many schools as it wishes to fill the positions described in the attestation, provided the employer remains in compliance with the recruitment and wage requirements detailed above (see Sections 4.9.2.1.2.1 and 4.9.2.1.2.2). An employer wishing to hire an F-1 student in a position not covered by its attestation must file an attestation related to the additional position.

4.9.2.1.2.4 Record-keeping requirements. "The employer shall have the burden of proving the truthfulness and accuracy of each attestation element in the event that such attestation element is challenged in an investigation. Substantiating documentation in support of each attestation element must be maintained by the employer and shall be made available to DOL for inspection and copying upon request." [20 CFR 655.910(b)(ii) and (iii)] Employers are required to retain documentation for 18 months beyond the end of a recruitment period or the finding or updating of "required wage" data. [20 CFR 655.940(d)(2)(ii) and (e)(2)(ii)] Failure to provide documentation will itself disqualify an employer, even if the employer is otherwise in compliance with the terms of an attestation.

4.9.2.1.2.5 Penalties for false attestation. DOL regulations provide for public access in each DOL region to a list of employers that have filed attestations. Any individual or organization may challenge the validity of an attestation. Investigation of challenges falls under the DOL Wage and Hour Division, which will receive complaints and, if it determines that there is reasonable cause, conduct investigations of attesting employers. An employer who files an attestation that, upon investigation, is found to be materially false is subject to disqualification from participation in the F-1 student-employment program and, when "knowing and willful submission of false statements to the Federal Government" are proven, is also subject to federal criminal statutes. [18 U.S.C. 1001; see also 18 U.S.C. 1546]

4.9.2.2 Off-campus employment based on unforeseen severe economic hardship

F-1 students are eligible to apply for off-campus employment based on severe economic hardship without having to follow the procedures for the pilot program (Section 4.9.2.1.1) provided that: (1) they are in good standing and carrying a full course of study; (2) they can demonstrate unforeseen severe economic hardship; (3) employment opportunities on campus or under the pilot program are otherwise unavailable or insufficient; (4) they have been in F-1 status for 1 academic year; and (5) acceptance of employment will not interfere with the students' carrying a full course of study. Provisions for off-campus employment based on severe economic hardship were absent in the regulations from October 1991 until July 1992, when they were reinstated.

INS states that circumstances deemed "severe economic hardship due to unforeseen circumstances beyond the student's control" may include "loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses." (8 CFR 214.2 (f)(9)(ii)(C), Federal Register, 20 July 1992, p. 31955).

Students wanting to apply for off-campus employment based on severe economic hardship will need to make a good-faith effort to locate employment both on campus or under the pilot off-campus employment program. In introductory language to the 20 July 1992 rule, INS suggests the following approach be taken by students and DSOs to meet this requirement: The student should consult with his or her DSO to determine whether there are any employment opportunities under the pilot program available in the area. If opportunities are available, the student should pursue such employment under the pilot program. If opportunities under the pilot program exist but are deemed insufficient, the DSO's certification on Form I-538 will satisfy this obligation. Further, if the DSO knows of no opportunities available either under the pilot program or on campus, the certification on Form I-538 will also satisfy this requirement (*Federal Register*, 20 July 1992, p. 31955).

An institution or school system which has an 8-month academic year or trimester calendar also satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for off-campus employment based on severe economic hardship.

A student may count his or her annual vacation period toward the academic-year-in-status requirement. For example, a student beginning full time studies on 10

January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester, would, should the need arise, be eligible to apply for off-campus employment based on severe economic hardship on 10 October—9 months from 10 January.

4.9.2.2.1 Procedure for off-campus employment based on severe economic hardship. To apply for off-campus employment based on unforeseen severe economic hardship, a student must submit a completed request on Form I-538 to a DSO at the authorized school of attendance. The DSO's certification of Form I-538 indicates that employment opportunities under the pilot program or on campus are unavailable or otherwise insufficient. As Form I-538 [rev. 7 August 1991] has not yet been revised to reflect changes in the regulations, DSOs will need to add language to the front of the form indicating a request for off-campus employment based on economic hardship. INS has recommended that on the front page of Form I-538 under section 9, DSOs write the following after 'Check one:' Severe Economic Hardship Authorized in accordance with 8 CFR 214.2(f)(9)(ii)(C) until [date]. DSOs do not need to endorse the student's I-20 ID.

Upon receipt of the DSO's certification on Form I-538, the student should submit the following to the INS office having jurisdiction over his or her place of residence: (1) Form I-20 ID, (2) certified Form I-538, and (3) From I-765 (application for employment authorization) with fee. Students will also want to submit supporting materials documenting the unforeseen nature of the economic hardship and, to the extent possible, the unavailability of employment under the pilot program or on campus. Documentation of the former might include: a letter from the student explaining the circumstances of the hardship, copies of a recent exchange transaction showing the currency level, or a letter from the primary source of funding indicating why the hardship could not have been foreseen.

INS will notify the student of the decision. If employment is authorized, INS will issue the student an Employment Authorization Document (Form I-688B). The student cannot begin employment until he or she obtains the EAD. Employment authorization will be granted in 1-year intervals up to the expected date of completion of the student's course of study. Off-campus employment based on economic hardship can only be renewed by INS and only if the student continues to maintain lawful status and good academic standing. If the application is denied, INS will indicate the reason for the denial. A denial may not be appealed. [8 CFR 214.2(f)(9)(ii)(F)]

4.9.3 Practical training

An F-1 student may be eligible to engage in temporary employment for practical training in his or her field of study, both before and after completion of studies. A student in an intensive English-language training program is not eligible for practical training.

Practical training is divided into two categories: (1) curricular practical training before completion of studies and (2) optional practical training both before and after completion of studies.

To be eligible for optional practical training, a student must have been in lawful status for "9 consecutive months." Curricular practical training also requires satisfying the 9-consecutive-months-in-status requirement unless the F-1 student is engaged in a graduate study program which requires that he or she begin an internship earlier. [8 CFR 214.2(f)(10)(i)] Accordingly, a master of social work student (MSW) who is required to begin fieldwork in his or her first term would be immediately eligible for curricular practical training. A bachelor's candidate in a cooperative education program would have to satisfy the 9-months-in-status requirement.

INS has confirmed that its use of "9 consecutive months" to characterize an academic year is exemplary only. An institution or school system that has an 8-month academic year or a trimester calendar also satisfies INS's definition of an academic year. Students enrolled in schools with quarterly calendars are expected to complete the equivalent of 3 quarters to be eligible for practical training.

A student may count his or her annual vacation period toward the academic-year-in-status requirement. For example, a student beginning full-time studies on 10 January who completes the semester, takes his or her school's normal summer vacation, and then resumes studies in the fall semester, would be eligible for practical training on 10 October—9 months from 10 January.

INS's use of "consecutive" with regard to months-in-status will restrict practical-training eligibility for a student who has interrupted his or her F-1 status by holding another status. An example is an F-1 student who was enrolled for the spring semester, changed status to H-1 during his or her summer vacation, and returned to F-1 status for the fall semester. Unlike the student in the previous example, this student may be required to maintain F-1 status for the full academic year (September to May or June) before establishing or reestablishing eligibility for practical training.

Students who have completed nine months in status prior to falling out of status are not required to complete a new nine months if they have been reinstated to F-1 status. [Letter from Jacquelyn A. Bednarz, Chief Nonimmigrant Branch, INS, to Lisa Enfield, January 1993, *Government Affairs Bulletin*, October 1993] However, students who fall out of status and make a new entry to the United States rather than apply for a reinstatement to F-1 status are considered to have made a "new admission" and must complete nine months before beginning practical training.

To be eligible for practical training, a student need not have been specifically in F-1 status for 9 months, provided he or she attended an INS-sanctioned school in any lawful nonimmigrant status for at least 9 months prior to changing status to F-1 and requesting practical training. For example persons who have been attending schools as J-1 students, H-1B nonimmigrants, or dependents of A, E, F, G, H, I, J, L, and N categories are affected; dependents of O, P, Q, and R categories also benefit. Aliens attending in violation of their status—INS views this as applying to principal aliens in B-2 status—may not take advantage of this provision. [INS cable, 6 April 1990]

Students may engage in curricular practical training only after they have received Form I-20 ID endorsed to show such eligibility, and only for the specific employer, location, and period indicated on the form. [8 CFR 214.2(f)(10)(i)(c)] Students may begin optional practical training only after they have been issued an Employment Authorization Document (EAD) by INS, and only for the period indicated on the EAD.

4.9.3.1 Curricular practical training

Students enrolled in a college, university, conservatory, or seminary whose training program is "an integral part of an established curriculum" may apply to the DSO for curricular practical training authorization. Such training is defined as "alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." [8 CFR 214.2(f)(10)(i)]

The October 1991 regulations provide little comfort to DSOs who have been grappling with eligibility standards for curricular practical training since the construct was formally introduced in May 1987. DSOs continue to face a choice: adhere to a narrow definition of curricular practical training, which facilitates eligibility decisions but severely limits the number of eligible students, or take a more expansive view that requires a thorough and frequently difficult examination of the nuances of each practicum, but opens this important educational benefit to greater numbers of students. DSOs wishing to gain a full understanding of the terms of curricular practical training, as defined by the October 1991 regulations, will need to combine the sparse regulatory language found at 8 CFR 214.2(f)(10)(i) with the elaborating discussion found in the preface to the October 1991 revision and in subsequent cables. Only through such combination is it possible to clarify INS's use of the pivotal terms, "required" and "sponsored."

The preface to the October 1991 regulations speaks of "both required and optional curricular practical training." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55611] The regulations themselves speak only of "required" curricular practical training; when preface and regulations are combined, however, it is reasonable to infer INS's intention to provide for practica that are required of all students as well as those required for a particular course or curricular track. In both cases, the courses or track must constitute "an integral part of an established curriculum." In the latter case, the DSO would need to establish that the practicum represents satisfaction of the requirements for the particular course or track, but not that the particular course or track is an invariable part of a program of study.

"Sponsored" employment is not directly defined, but INS's discussion of postcompletion practical training provides guidance. It appears that "unsponsored" employment is employment that is "unstructured and unmonitored by the schools" and sought through "the open market." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55611] INS has elsewhere characterized unsponsored employment as "self-study." [INS-NAFSA meeting, 13 November 1991] "Sponsored" is defined conversely as structured employment that is monitored by the school and obtained through the support of the educational institution.

An example of curricular practical training required of all students would be supervised fieldwork for the MSW degree. All MSW candidates are required to work with a different social service agency each semester of a four-semester program. In no case may the "fieldwork instruction" requirement be waived. An arts administration internship requirement for the degree of master of fine arts (MFA) would be another example. Periods of internship with one or more arts organizations are arranged in consultation with each candidate for the MFA in arts administration, and the internship is a formal and explicit requirement for the degree. A third example of curricular practical training would be a doctoral student engaged in research for the universally required dissertation. The research involves innovative technology available only at a particular corporation's R&D facilities. The student takes employment at the business's laboratory for the purpose of engaging in essential data collection that is integral to his or her educational program.

An example of curricular practical training required for a particular course or curricular track would be the following: A student studying marketing for his or her MBA degree is offered several options to fulfill the concentration in marketing. For one of the options, a paid internship is required. In this case, the internship would qualify as curricular practical training because it is required for a particular course or track, even though it is not required of all MBA students.

The Service is clearly concerned about potential abuses of this option. In an effort to address some of the ambiguities in the regulations, INS issued a cable on 22 January 1992 discussing curricular practical required for a particular course but not for all students pursuing a degree. In this case, INS states that such training can be classified as curricular practical training if the student receives course credit. "The training program must be listed in the school's course catalogue with the assigned number of credits and the name of the faculty member teaching the course clearly indicated. There should also be a description of the course with the course objectives clearly defined. Students enrolled in such a course may work out the details of their specific projects within the established course objectives under the supervision of the instructor." (INS cable, 22 January 1992, pp. 3–4).

DSOs are therefore well advised to document rigorously the rationales for training authorizations required for a particular course or curricular track. At a minimum, qualifying curricular practical-training courses will carry academic credit, be listed in a school's regular bulletin of course offerings, and have a faculty member assigned to teach the course. It is particularly important that any employment experience required by the course be instrumental to achieving a curricular academic objective. A course offered for the primary purpose of facilitating employment authorization does not qualify for curricular practical training.

The following example does not have formal INS endorsement but would appear consistent with the guidelines for training required for a particular course or tract. A 3-credit field-studies course (Field Studies B9002-01) is offered as an elective to U.S. and international students by a graduate school of business. The course, which counts toward the 20-course MBA requirement, offers students an opportunity to apply the theories and key themes established in the MBA core courses in a dynamic, real-life setting. The course is listed in the school's regular course catalog and is taught by three members of the full-time business school faculty. The instructors are appointed by the dean. Grading is on a pass/fail basis. The field-studies course is open to all students who have completed at least two terms at the business school; it requires completion of a paid or unpaid internship of at least 6 weeks. Students register for the course in the term in which the internship takes place. The two specific requirements for B9002-01 are:

1. Prior to the start of the field study, students wishing to enroll in the course are expected to prepare a proposal that specifies the field-study site, the nature of the field work, the planned area of study, and the study objective. Areas of study may include (i) relating the work assignment to a key core theory or theme, (ii) defining a management problem and proposing a solution, (iii) developing a marketing plan for a new or existing product or service, or (iv) other topics considered appropriate by the faculty instructional committee. The proposal must be approved by the student's faculty supervisor prior to enrollment or commencement of field work.

2. At the conclusion of the field study, the on-site field-work supervisor must submit a student-evaluation form. The student must prepare a report of 10 to 12 pages on the topic selected for study. Finally, the student must participate in a field-study debriefing held by the course faculty for the benefit of other field-study students and the general student body. The evaluation and report are due on the last day of classes of the term during which the field study takes place; the field-study debriefings are held during the term following the field study.

Practical training offered through a university cooperative education office, which is an integral part of the curriculum but not required either for a particular course or of all students, constitutes bona fide curricular practical training. "Curricular practical training by definition may be ... cooperative education ... which is offered by sponsored employers through cooperative agreements with the school. Curricular practical training offered through institutionally sponsored cooperative education ... is usually optional and not-for-credit."[INS Cable, 24 May 1992, p.1]

Although regulations distinguish between full- and part-time curricular practical training authorization, students are not limited in the amount of curricular practical training they may utilize. Students who have engaged in 1 year or more of full-time curricular practical training, however, are ineligible for optional practical training. [8 CFR 214.2(f)(10)(i)(B)] Curricular practical training entailing employment of 20 or fewer hours per week is considered part time and requires concurrent coursework during the academic year to maintain status as a full-time student. Employment of more than 20 hours per week is considered full-time curricular practical training. INS counts only full-time curricular practical training in determining eligibility for optional practical training. Part-time curricular practical training is not counted toward the 1-year threshold at which a student loses eligibility for optional practical training. [INS-NAFSA meeting, 13 November 1991]

4.9.3.1.1 Procedure to apply for curricular practical training. To apply for curricular practical training, a student must submit the following to a DSO at the authorized school of attendance: (1) a completed request for curricular practical training on Form I-538, and (2) Form I-20ID.

Regulations require no further documentation. However, the DSO is well advised to develop a procedure that documents establishing student eligibility (see Section 4.9.3.1). Students will have to present a job offer to the DSO, as the regulations require the DSO to authorize training with a specific employer.

To certify the student's eligibility to engage in curricular practical training, the regulations state that the DSO must do the following:

(1) Certify the Form I-538 and send the form to the Service's data processing center;

(2) Endorse the student's [Form] I-20ID with 'full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)'; and

(3) Sign and date the [Form] I-20ID before returning it to the student. [8 CFR 214.2(f)(10)(i)]

4.9.3.2 Optional practical training before and after completion of studies

In regulations promulgated 20 July 1992, INS merged the existing category of postcompletion practical training with the previously existing (prior to October 1991) category of precompletion practical training into one category called "optional practical training." An F-1 student may apply to INS for optional practical training directly related to his or her major area of study after being enrolled for 9 consecutive months.

Optional practical training falls into four categories: (1) during the student's annual vacation and at other times when school is not in session if the student is currently enrolled and eligible, and intends to register for the next term or session; (2) while school is in session, provided that optional practical training does not exceed 20 hours a week; (3) full-time after completion of all course requirements for the degree (excluding thesis or the equivalent), if the student is in a bachelor's, master's, or doctoral degree program; and (4) full-time after completion of the course of study. Training under the first three options would occur before completion of a course of study, while the last option would occur following completion of a course of study. [8 CFR 214.2(f)(10)(ii)]

A student working full-time in optional practical training after completion of studies may attend school part-time. Optional practical training after completion of studies may not be part-time. [Letter from Jacquelyn A. Bednarz, Chief Nonimmigrant Branch, INS, to David Swaim, *Government Affairs Bulletin*, May 1993.]

Optional practical training may be granted for a maximum of 12 months. Although students may engage in optional practical training before and after completion of studies, the total amount of time available is 12 months. For example, if a student uses 12 months of pregraduation optional practical training, he or she is ineligible for postgraduation practical training. A student, however, can use a chosen amount of optional practical training before graduation and a chosen amount after graduation, so long as the total does not exceed 12 months. Optional practical training may be split between educational programs (e.g. 3 months after completion of a bachelor's degree and 9 months after completion of a master's degree). [INS Cable, CO 214 F-C, 10 June 1993]

Optional practical training will be calculated on a daily basis, with part-time practical training (20 hours per week or less) being deducted from the available practical training at one-half the full-time rate. Practical training following completion of a course of study must be completed within 14 months of completion of studies.

A student may apply for optional practical training after completion of a course of study even if he or she intends to engage in more than one course of study. However, an F-1 student may be authorized to engage in a total of 12 months optional practical training for the duration of student status. If an F-1 student completes 12 months of optional practical training, departs the United States, and then reenters in F-1 status after 5 months to begin a new program, he or she is eligible for 12 months of practical training. Likewise, if an F-1 student completes 12 months of optional practical training, changes to H-1B status for more than 5 months, and then changes to F-1 status to begin a new program, he or she is eligible for 12 months of optional practical training after having been in status for 9 consecutive months.

To be authorized to undertake optional practical training, a student must apply to the DSO for recommendation for optional practical training and, based on the DSO's endorsement, apply to INS for an EAD, Form I-688B. The effective date of EAD authorization for practical training prior to completion of a course of study will be either the date employment is scheduled to commence, as reflected by the DSO's endorsement on the I-20 ID, or the date an EAD is issued—whichever occurs later. The effective date of EAD authorization for practical training after completion of a course of study will be either the date of completion of studies, as reflected by a DSO's endorsement, or the date an EAD is issued—whichever occurs later. If the effective date of practical training following completion of a course of study is the date an EAD is issued, and issuance occurs more than 2 months after completion of studies, a student will not be authorized for a full 12 months (if 12 months of eligibility are available) but will have a training-ending date 14 months after the date of completion of studies.

Once an EAD has been issued, there is no provision for recision of the length of practical training granted. For example, a student who is issued an EAD for practical training following completion of a course of study and who fails to complete the degree as indicated by the DSO's endorsement continues in lawful status provided the student does not begin full-time training employment until he or she completes studies (the student could work part-time). Practical training time lost as a consequence of delayed completion may not be recovered. [INS-NAFSA meeting, 13 November 1991]

No specific job offer is required either to request recommendation for optional practical training or to apply for the EAD. [8 CFR 214.2(f)(10)(ii)(B) and (f)(11)] However, students seeking optional practical training prior to program completion are advised to secure a job offer prior to applying for the EAD so as to ensure that time available for optional practical training is not lost.

4.9.3.2.1 Procedure to request recommendation for optional practical training. To request recommendation for optional practical training, the student must submit a completed Form I-538 without fee, and a Form I-20 ID to a DSO at the school he or she is authorized to attend. The regulations stipulate that this must be done "during the same 120-day period when the DSOs are authorized to recommend practical training." [8 CFR 214.2(f)(11)]

Although not defined in current INS regulations, the 120-day period previously referred to the period 90 days prior to completion of the course of study, and 30 days after completion of the course of study. Because the 120-day time frame is not defined, students requesting recommendation for practical training prior to completion of studies can apply up to 120 days prior to commencement of the employment. Likewise, students can wait up to 60 days after completion of studies to apply. Sixty days reflects the period of time F-1 students are still in-status before departing from the United States. [INS Cable, CO 214 F-C, 10 June 1993] During the 60-day period, students may apply for optional practical training (see Section 4.4.1.3).

Pre-October 1991 regulations required certification that comparable employment was not available in the country of the student's foreign residence. This requirement was dropped in the 29 October 1991 regulations.

To approve a request for recommendation for optional practical training, the DSO must:

1. certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

2. endorse and date the [Form] I-20 ID to show that optional practical training in the student's major field of study is recommended full time (or part time) from (date) to (date); and

3. return to the student the [Form] I-20 ID and send to the INS data processing center the school certification on Form I-538. [8 CFR 214.2(f)(10)(ii)(D)]

To be authorized to accept employment for optional practical training, the student must apply for the EAD on Form I-765 at the INS office having jurisdiction over his or her place of residence, during the period when the DSOs are authorized to recommend practical training (either 120 days before commencement of employment or 60 days after completion of study). The application process includes a required personal appearance. [8 CFR 214.2(f)(11)] The student must submit the following documents to the INS office: Form I-765, with fee, and Form I-20 ID bearing the DSO's recommendation for optional practical training.

The INS will adjudicate the I-765 and, based on the DSO's recommendation, issue an EAD (Form I-688B) "unless the student is found otherwise ineligible." [8 CFR 214.2(f)(12)] If ineligibility is determined, the student will receive written notice of the reason. There is no formal appeal from a denial, but the student may file a motion requesting review of the decision (see Section 14.3.2).

Students may anticipate wide variation in INS processing time for EADs. While some Service offices may be able to accommodate same-day adjudication, the more common experience, particularly in large metropolitan areas, will be a wait of several weeks to several months. DSOs should be aware that INS is contemplating changes whereby EADs would be issued by INS service centers. DSOs should look to future regulations and updates from NAFSA regarding possible procedural changes.

INS regulations provide that if an employment application has not been adjudicated within 90 days of receipt by INS, the applicant will be granted 240 days of interim employment authorization. [8 CFR 274a.13(d)] To take maximum advantage of the relief provided by this interim authorization, DSOs would do well to advise their F-1 students to apply early. Procedures for application under the "90-240-day rule" will vary by immigration district. For the most part, however, the student should go in person to the INS office where he or she filed an I-765 for practical training more than 90 days earlier. A student who presents a dated receipt or canceled check for the I-765 filing fee and a photocopy of the original application may reasonably expect to be issued an EAD, Form I-688B, the same day.

Regulations do not require either the DSO or INS to review a job offer to determine if it is appropriate to a student's optional practical training. This determination appears, by default, to fall to the employer, who is required to establish that "the alien will be employed only in an occupation which is directly related to his or her studies." [8 CFR 274a.12(c)(3)(i)] A student may change employers during the period of authorized practical training provided that the new employment continues to be directly related to the student's field of study and commensurate with his or her educational level.

A student authorized to engage in practical training is considered in status for the period authorized, plus 60 days in which to depart from the United States or change status if practical training follows completion of a course of study. Employment is not permitted, however, during the 60-day period to depart.

An F-1 student who wants to terminate practical training and begin a new program of study must follow the procedures discussed in Sections 4.8.2 and 4.7.3, respectively, for transfer of schools or for continuation from one educational level to another at the school last authorized to attend.

If the training sought by an F-1 student cannot be completed within the maximum practical training period for which he or she is eligible, permission to engage in practical training may not be authorized. A change to another nonimmigrant status is called for in these cases. That other nonimmigrant status may be H-1B (for those completing programs that qualify them to practice a specialty occupation), H-3 (for trainees at a lower or less-specialized level of education), or J-1 (if the graduate's prospective employer is the sponsor of an exchange-visitor program whose activities encompass the proposed training). (See Section 2.7 concerning changes of nonimmigrant classification.)

4.9.3.2.2 Prior regulations. Until 29 October 1991 practical training was divided into two categories: precompletion practical training (which included curricular practical training) and postcompletion practical training. Students were eligible for 12 months of pre- and 12 months of postcompletion practical training. With the exception of curricular practical training, precompletion practical training was removed from the October 1991 regulations and not made available until July 1992 when the benefit was reinstated and merged with postcompletion practical training. Previous use of precompletion practical training (prior to 29 October 1991) will not affect eligibility for the 12 months of optional practical training available under the new regulations. [INS Cable, CO 214 F-C, 10 June 1993]

Postcompletion practical training authorizations granted prior to 29 October 1991 are recognizable as follows: (1) for the first period of practical training, a student's Form I-20 ID will show DSO endorsement of the "date until which employment is authorized; the occupation or field in which the employment is authorized; the name, title and signature of the DSO; and the date and location of the endorsement." [8 CFR 274a.12(c)(3)(ii), pre–29 October 1991]; and (2) for the second period of practical training, a student's Form I-20 ID will show an INS approval stamp and INS notation specifying the date until which employment is authorized; the occupation or field; the name, title, and signature of the authorizing officer; and the date and location of the endorsement. [8 CFR 274a.12(c)(3)(ii), pre–29 October 1991]

4.9.3.3 Travel and reentry while engaging in practical training

An F-1 student engaged in authorized curricular or optional practical training before completion of studies would follow the same procedure for visits abroad and reentry (see Section 4.11) required of a full-time student.

An F-1 student in practical training following completion of studies who travels outside the United States temporarily can be readmitted for the remainder of the authorized training period, provided the student presents Form I-20 ID endorsed by the DSO within the preceding 6 months (presumably, the DSO's recommendation for practical training counts as an endorsement) and an unexpired EAD (Form I-688B). [8 CFR 214.2(f)(13)(ii)] Students should be reminded that they will still need a valid F-1 visa. The school may issue Form I-20A-B for reentry to continue practical training or endorse the student's Form I-20 ID, provided practical training has been authorized by INS (see also Section 4.11.2).

If a student has completed his or her studies and leaves the United States before optional practical training is authorized, he or she will not be able to obtain permission for practical training upon return to the United States if, indeed, the student is permitted to reenter the country at all. Time spent abroad during authorized practical training is charged against the student's practical training time. Students may also have trouble being readmitted to the United States if they have obtained an EAD, are not employed pursuant to practical training, and are seeking to reenter towards the end of their practical training period. In this situation, the inspecting officer might question why the student is returning to the United States if he or she has not secured practical training employment.

4.9.4 Employment under sponsorship of certain international organizations

A special situation exists for F-1 students who have been offered employment under the sponsorship of an international organization, as defined by the International Organization Immunities Act. [59 Stat. 669] A student seeking permission to work for such an organization makes application to the INS district office having jurisdiction over his or her residence by submitting the following: "[1] a written certification from the organization that the proposed employment is within the scope of the organization's sponsorship, [2] [a Form] I-20 ID endorsed for reentry by the DSO within the last 30 days, and [3] a completed Form I-765, Application for Employment Authorization, with the fee required." The student may not begin employment until he or she has been issued an EAD. [8 CFR 214.2(f)(9)(iii)] Although not stated in the regulations, a student seeking permission to work under the sponsorship of such international organizations must also complete Form I-538. Upon DSO endorsement, this form should be forwarded to the student data processing center in London, KY.

Qualifying international organizations hiring F-1 students for vacation or short-term employment may offer or require students to change their nonimmigrant classification to A (diplomatic) or G (international organization). DSOs will wish to advise students that such a change of status, while advantageous in some circumstances, has been described by an INS official as interrupting F-1 status for purposes of qualifying for off-campus employment or practical training (see Sections 4.9.2 and 4.9.3).

4.9.5 Verification of employment eligibility

The Immigration Reform and Control Act (IRCA) of 1986 (PL 99-603) created statutory provisions prohibiting the unlawful employment of aliens. Regulation 8 CFR 274a provides for a verification system of employment eligibility designed to prevent the employment of unauthorized aliens. It contains a section specifying the classes of aliens, including students in F-1 status, who are authorized to accept employment [8 CFR 274a.12], and a section specifying particular documents that must be presented by the alien and verified by the employer to establish eligibility for employment. [8 CFR 274a.2(b)]

Part-time on-campus employment (see Section 4.9.1) "is authorized by the school and no specific endorsement by a school official or Service officer is necessary" to show that the employment is authorized. [8 CFR 274a.12(b)(6)(i), *Federal Register*, 29 October 1991, p.

55616] On-campus employers commonly cite a student's Form I-20 ID completion date (item 5) as the expiration date of the student's on-campus employment authorization. In the case of a student working on campus following completion of studies and before transferring to another INS-approved school (see Section 4.9.1), the on-campus employer would reasonably cite the new school's Form I-20A-B reporting date (item 5) as the expiration date of the student's on-campus employment authorization.

Authorization for off-campus employment under the pilot program (as discussed in Section 4.9.2) is shown on Form I-20 ID, which is endorsed by the DSO as follows, "part-time employment with (name of employer) at (location) authorized from (date) to (date)." [8 CFR 214.2(f)(9)(ii)(E) and 8 CFR 274a.12(b)(6)(ii)] No INS endorsement is necessary.

Authorization for off-campus employment due to unforeseen severe economic hardship is granted by INS, which issues the EAD showing the starting and ending dates of employment authorization. Authorization is also noted on the I-20 ID. [8 CFR 214.2(f)(9)(ii)(F)(2) and 8 CFR 274a.12(c)(3)(iii)]

Authorization for curricular practical training employment appears on Form I-20 ID, which is endorsed by the DSO as follows, "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)." [8 CFR 214.2(f)(10)(i)(B) and 8 CFR 274a.12(b)(6)(iii)] No INS endorsement is necessary.

Authorization for optional practical training either preceding or following completion of studies is granted by INS, which issues an EAD (Form I-688B) showing the starting and ending dates of employment authorization; the terms and conditions of employment, i.e., F-1 practical training; the identifying number of the INS officer; and the date and location of the endorsement. [8 CFR 214.2(f)(11) and 8 CFR 274a.12(c)(3)(i)].

Similarly, INS grants authorization of F-1 student employment with an international organization by issuing an EAD showing the starting and ending dates of employment authorization; the terms and conditions of employment, e.g., the approved occupation or organization; the identifying number of the INS officer; and the date and location of the endorsement.

4.9.6 Social Security coverage

Prior to the Tax Reform Act of 1984, and subsequent regulations promulgated 24 April 1992, contributions for Social Security (FICA tax) were not to be withheld from wages of nonimmigrant F-1 aliens if the employment was authorized. Recent changes in the regulations, however, make F-1 students subject to FICA tax withholdings if they are "residents for tax purposes." Generally, F-1 students become "residents" for tax purposes after they have been in the United States for 5 years. The April 1992 regulations were retroactive to 1 January 1985, the effective date of the 1984 law. [*Federal Register*, 27 April 1992, p. 15237]

Under the following circumstances, however, F-1 students remain exempt from FICA withholdings, regardless of the amount of time spent in the United States. These cases include services performed (1) by an enrolled student for the school he or she regularly attends; (2) for state and local governments, unless an agreement with the federal government is involved; (3) for a foreign government; and (4) for an international organization.

4.9.7 Income tax

Earnings from F-1 student employment, including income from assistantships, are usually subject to federal, state, and local income taxes. Additional information on F-1 students' federal income tax obligations may be found in Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8). Of note is the requirement that all F-1 students file income tax returns (1040NR), regardless of whether they have earned any income in the United States.

4.10 REINSTATEMENT TO STUDENT STATUS

An F-1 student who has overstayed his or her authorized period of stay or has otherwise failed to maintain F-1 student status (see Section 4.5) may be reinstated to lawful F-1 status at the discretion of an INS district director. The student makes application on Form I-539 (Application to Extend Status/Change Nonimmigrant Status) with fee (see Appendix 1), accompanied by an updated or initial Form I-20A-B from the school the student is attending or wishes to attend, and a copy of Form I-94 (Arrival/Departure Record). It is strongly suggested, but not specifically required, that the student include his or her last Form I-20 ID, documentation showing funding for the intended course of study, and a written statement. The INS director may reinstate the student to lawful F-1 status, if he or she:

(A) establishes to the satisfaction of the INS director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20A-B;

(C) has not engaged in unauthorized employment; and

(D) is not deportable on any ground other than section 241(a)(1)(B) or (c)(i) of the Act [overstaying or failing to maintain status]. [8 CFR 214.2 (f)(16)(i)]

If an order to show cause and notice of hearing has been issued, the application for reinstatement should be made to the INS district director in whose district the order was issued or where the hearing is being held; if an order to show cause and notice of hearing has not been issued, application should be made to the INS director in whose district the applicant is temporarily located, regardless of whether the intended school is in that district. [Cable of 1 November 1985 to INS field offices from Harriet B. Marple, assistant commissioner, adjudications]

If the reinstatement application is approved, INS endorses the Form I-20A-B, retains p. 1-2 for transmittal to INS's Data Processing Center, and returns the Form I-20 ID (p. 3–4) to the student. Although there is no formal appeal from a denial, the applicant may seek reconsideration through a motion (see Section 14.3).

A student may also regain F-1 status by leaving the United States and reentering with a new Form I-20. The I-20 should be marked "initial entry" and students should be aware that the INS does not consider this to be a reinstatement to previous F-1 status. The distinction becomes important in cases where a student will want to begin practical training. If the student is reinstated, time spent in lawful F-1 status counts toward the nine-month in-status requirement for beginning practical training. [Jacquelyn A. Bednarz, August 1993 letter to Lisa Enfield, *Government Affairs Bulletin,* October 1993] If the student departs the United States and reenters, he or she will need to fulfill nine months in status before beginning practical training or off-campus employment.

4.11 VISITS ABROAD AND REENTRY

Whenever F-1 students wish to leave the United States temporarily and return to continue studies at the institution in which they are enrolled, they must secure the necessary documents to permit entry to another country and reentry to the United States.

4.11.1 Entry into another country

F-1 students who wish to visit temporarily their country of citizenship or permanent residence generally will be allowed to enter that country if they hold a valid passport or other travel document issued by that country.

The addresses and phone numbers of all consulates located in the United States may be found in Department of State publication 7846, "Foreign Consular Offices in the United States," available from the Superintendent of Documents (see Appendix 8).

4.11.1.1 Entry into Canada

All F-1 students wishing to visit Canada require Canadian visitor visas unless they are citizens of countries that are exempt from the Canadian nonimmigrant visa requirement. A list of such countries appears in Appendix 10. The Canadian government will issue a visitor visa to a student in the United States only when convinced that the student is readmissible to the United States. The Canadian government advises that, at least three weeks in advance of their planned trip to Canada, students submit to the appropriate Canadian consular post a completed visitor-visa application form (Form IMM 1296) with required fee, valid passport, Form I-94, two passport-sized photographs, proof of adequate funds for the stay in Canada, current Form I-20A-B, old Form I-20A-B if a new Form I-20A-B is issued specifically for the trip to Canada, and Form I-20 ID. These documents should be sent by certified mail, along with a return envelope with postage paid for certified mail.

For citizens of some countries, an interview is required before a Canadian visitor visa will be issued. Students wishing to visit Canada should telephone the Canadian consulate general in their area to ascertain the need for an interview and the days and hours of the consulate's operation.

When traveling to Canada, an F-1 student should carry each of the documents required for the issuance of the visitor visa plus evidence of return transportation arrangements and sufficient funds for the period of contemplated stay in Canada. At certain points of entry, it is advisable to have a letter from the foreign student adviser certifying the student's current enrollment at the institution.

4.11.1.2 Entry into Mexico

Mexican diplomatic authorities in the United States have indicated that information regarding visitor or tourist visas is too complex to be answered in a general manner. Some individuals may be exempt from visa requirements based on treaties between their country of origin and Mexico.

Requirements for other individuals vary with the nationality of the prospective visitor. It is suggested that inquiry be made at the closest Mexican consulate.

4.11.2 Requirements for reentry into the United States

4.11.2.1 General

In order to reenter the United States after a temporary absence of 5 months or less, an F-1 student must have the following documents: a valid passport or travel document and a valid visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and either a properly endorsed Form I-20 ID (p. 4 of Form I-20A-B), if there has been no substantive change in the information contained in items 4, 5, 7, and 8 on the student's most recent Form I-20A-B, or a new Form I-20A-B, if there has been such a change. [8 CFR 214.2(f)(4)] As a matter of practice, INS officials at ports of entry require that the Form I-20 ID bear a DSO certification for reentry executed in the current term—if a student is reentering during the academic year—or, if a student is returning from his or her annual vacation, executed in the term preceding the vacation. The endorsement on p. 4 may be executed even if there has been a change in the date the student is expected to report to the school. If a student loses the Form I-20 ID, a DSO may issue a duplicate Form I-20 ID with the student's INS admission number noted, provided it is in all respects (except reporting date) identical to the original.

A "temporary" absence for the purpose of readmission with an endorsed p. 4 of Form I-20A-B is defined as an absence of 5 months or less. A substantive change in the total estimated expenses in item 7 on p. 1 of Form I-20A-B is customarily defined as a 30 percent increase.

With the exception noted in Section 4.11.2.2.3, a student must have a valid F-1 visa stamp in his or her passport. Consequently, a student who entered the United States in another nonimmigrant classification and has changed status to that of an F-1 student must obtain an F-1 visa (passport stamp) before reentering the country. It is not possible to obtain an F-1 visa inside the United States. An F-1 student who needs to obtain a visa in order to enter the United States after a temporary absence must apply for the visa at a U.S. consular office abroad.

The documents needed by a continuing student for visa issuance are a valid passport, a current photograph, a valid Form I-20A-B completed by a designated official of the school the visa applicant is attending or a properly endorsed p. 4 of Form I-20A-B (the Form I-20 ID) if no substantive change has occurred with regard to items 4, 5, 7, and 8 of the student's most recent Form I-20A-B, and proof of financial capability for continuing studies.

Although it is possible for an alien to secure an original or renewal of an F-1 visa in a foreign country other than his or her own, the student may face more stringent requirements than in the home country. In addition to proving eligibility for an F-1 visa, the student may have to convince the consular officer that there is a legitimate reason for making the application outside the home country. In some instances, the consular officer in the third country will find it necessary to check with the consular office in the student's place of residence. This can be time-consuming and result in a charge to the student if information is requested by cable rather than diplomatic mail. Returning students should be advised to make travel plans to allow for such delays (see also Section 4.4.1.1).

4.11.2.2 Exceptions

4.11.2.2.1 Transfer. If an F-1 student has lawfully transferred schools while in the United States, the visa will specify the school for which it was initially issued. Similarly, if an F-1 student intends to transfer schools upon reentering the United States, the visa will specify a school other than the one he or she will attend. In these instances a student may reenter with an unexpired F-1 visa and Form I-20A-B from the new school without having the new school's name endorsed on the visa. If the student has not yet attended the new school, the INS officer at the port of entry will endorse the student's Form I-20 ID to indicate the new school and will send Form I-20A-B to the INS Data Processing Center to record the new school in the INS data system. [8 CFR 214.2(f)(4)]

4.11.2.2.2 Without Form I-20 ID. Occasionally a student will leave the United States temporarily and seek to return to this country without his or her lost, forgotten, or misplaced Form I-20 ID. If while abroad the student discovers the absence of the Form I-20 ID, and time permits, the DSO should issue and send the student a duplicate Form I-20 ID (see Section 4.11.2.1) for use upon reentry. Since the student is supposed to retain all Forms I-20 ID at all times, the absence of the Form I-20 ID on reentry may prompt INS issuance of a Form I-515 (see Section 4.4.3). The lack of a Form I-20 ID will not prevent the student's departure from the United States; it may, however, prevent the student from entering Canada or Mexico. Moreover, even a duplicate Form I-20 ID, which lacks the expected INS admission stamp in the "For Immigration Official Use" box on the top right corner of the form, may be insufficient for the student to obtain entry to Canada or Mexico (see Section 4.11.1).

A student without his or her Form I-20 ID—e.g., because INS has the form in connection with a request for employment based on economic hardship or optional practical training (see Section 4.9.3.2.1)—should be warned to discuss any travel plans and schedule with the DSO, as travel may not be advised. If a student's program of study has been completed, the student has no basis for reentry to the United States as an F-1 student unless he or she has either been admitted to a new program of study and has been issued the corresponding Form I-20A-B or INS has authorized optional practical training after completion of studies. In the latter case, a returning student is required to present both an endorsed Form I-20 ID and an EAD at the port of entry to qualify for readmission to the United States. If an EAD has not been issued and the student has exceeded the "expected date of completion" (Form I-20 ID, item 5), the student has no basis for being readmitted in F-1 status (see also Section 4.9.3.3).

4.11.2.2.3 Automatic revalidation of visas. Under certain circumstances, an F-1 student with an expired visa may reenter the United States as though the visa were still valid. An expired F-1 visa may be considered to be automatically extended to the date of application for readmission to the United States (and therefore the visa in the passport need not have an expiration date that is in the future), provided the F-1 student does the following:

1. applies for readmission to the United States after an absence not exceeding 30 days solely in Canada, Mexico, or adjacent islands other than Cuba;

2. has maintained and intends to resume status as an F-1 student; [INS Cable, 4 November 1992, *Government Affairs Bulletin*, November 1992]

3. presents (or is the accompanying spouse or child of an alien who presents) a valid Form I-94 and either a

properly endorsed Form I-20 ID (p. 4 of Form I-20A-B), if there has been no substantive change in the information contained in items 4, 5, 7, or 8 on the most recent Form I-20A-B, or a new Form I-20A-B, if there have been substantive changes in that information;

4. possesses a valid passport (unless exempt from passport requirements); and

5. applies for readmission within the authorized period of initial admission or extension of stay.

Furthermore, a person who entered the United States in a classification other than F-1 student, but whose status was subsequently changed to F-1 student, may be considered to have the previous visa automatically revalidated and converted to an F-1 visa if he or she meets the conditions stated above. [22 CFR 41.112(d)]

Thus, under these circumstances, a returning F-1 student whose visa has expired may be saved the necessity of applying for a new visa. A student whose visa has been canceled is not eligible for automatic visa revalidation.

Individuals carrying passports issued from within the United States to replace the passport that contains their original nonimmigrant visa may qualify for automatic visa revalidation only if they have the old passport in their possession.

Citizens of countries that keep the old passport upon issuance of a new one are therefore at a disadvantage when traveling to contiguous territories.

4.11.2.2.4 Advance notification. Under certain circumstances, F-1 students whose visas have expired and who intend to pay temporary visits abroad can request the Department of State to process necessary special clearances in advance of the travel, thus significantly reducing the processing time for actual issuance of the visa. This procedure is known as advance notification.

The instructions state that advance notification is administered exclusively on a case-by-case basis only to foreign nationals falling within the two following groups. Applications not meeting the criteria set forth below will not be considered for advance notification processing. Category 1: [Soviet and PRC] nationals requiring special clearances who have expired visas and who are required to travel abroad other than to their home country for a brief period (commonly a week or less) and for a specific purpose, such as to attend a conference, symposium, or panel. or present an academic paper, collaborate on research, etc. and [Lebanese and Eastern European] nationals requiring special clearances who have expired visas and are required to travel home; Category 2: foreign nationals requiring special clearances who have expired visas and who are able to demonstrate compelling humanitarian circumstances necessitating advance notification. The service is not available to nationals of countries with which the United States does not have diplomatic relations.

The effect of advance notification is to notify the consular post that the student will be applying for the visa, that there are no objections from the Department of State or other U.S. government agencies if the visa is issued, and that, in the case of a visa application being made in a third country, there are no objections from the U.S. consular post in the applicant's own country. An advance notification does not guarantee that a visa will be issued; it simply expedites certain security clearance requirements.

Application for advance notification is made to the Visa Office, CA/VO/L/C, Room 1343, Department of State, Washington, D.C. 20520-0113. The Visa Office offers the courtesy of providing a form, but the applicant may simply provide the following required information:

1. name and sex of the student
2. date and place of birth
3. occupation in home country
4. employer in home country
5. purpose of visit abroad
6. date of departure from United States
7. date of return to United States
8. U.S. consulate/embassy where applicant will apply for a visa
9. remaining authorized length of stay in the United States upon return from this trip
10. description of reasons for severe hardship or humanitarian concern (if applicable).

Relevant required attachments are:

1. photocopy of expired U.S. visa
2. photocopy of Form I-94
3. photocopy of old and new Form I-20A-B
4. letter and evidence documenting business or professional travel, or severe hardship or humanitarian concern.

The student going to a third country should apply to the appropriate embassy or consulate in the United States for a visa for that country. If the student has any difficulty in obtaining a visitor visa for a third country, the adviser should call the Visa Office of the Department of State at (202) 663-1201.

The procedure known as "preauthorization of visa," which had a somewhat broader application, has been superseded as of May 1990 by the advance notification procedure and application.

4.11.2.2.5 Temporary admission with Form I-515. Students who do not have all the required documentation can be expected to be denied entry to the United States. However, an F-1 student (and accompanying dependents, if applicable) who is otherwise eligible for readmission after a temporary absence, but who presents an outdated Form I-20A-B or whose I-20 ID does not have a current certification from a designated official, may be admitted in F-1 status for 30 days and issued Form I-515. Form I-515 instructs the student to submit the appropriate documents to the local INS office within 30 days to obtain an extension of stay for duration of status (see also Section 4.4.3).

4.12 CHANGE OF STATUS (CHANGE OF NONIMMIGRANT CLASSIFICATION)

4.12.1 Change to F-1 student status

An alien in any nonimmigrant status except C, D, K, or M (and in certain cases J), and except an alien who has entered the United States under the terms of the Visa-Waiver Pilot Program (see Section 12.2.2.6), can apply for a change to F-1 status if he or she has maintained lawful nonimmigrant status up to the time the application is filed. An alien in J status may apply for a change of status only if not subject to the 2-year home-country physical-presence requirement, or if that requirement has been waived. A foreign medical graduate who acquired J status to receive graduate medical education or training may change status to F-1 only if he or she has received a waiver of the home residency requirement based on fear of persecution or interest of U.S. government agency (see Section 9.10).

Application for change of nonimmigrant status is made on Form I-539, Application to Extend Status/Change Nonimmigrant Status. The form must be accompanied by a properly executed Form I-20A-B from the admitting institution with item 11 completed and signed by the applicant; a copy of the applicant's Form I-94; evidence of financial support; and the required fee (see Appendix 1).

INS officers are instructed to adjudicate all applications for change to F-1 status with reference to the considerations prescribed for consular officers determining eligibility for F-1 visas. In particular, when an applicant intends to study for less than 1 year, evidence of the immediate availability of funds or assurances of support necessary to pay all tuition and living costs for the entire period of study may be required. Documentation of funding for a longer period of intended study is also required. All evidence—including affidavits of support, if the student is dependent on others, and the DSO's figures in the Form I-20A-B items related to tuition and fees, estimated living expenses, and sources of the student's income—is to be "examined critically" in reaching a determination of the applicant's financial ability to pursue the intended course of study. [OI 8 CFR 248.7(b) and (c)]

Three instances of change of nonimmigrant status to that of F-1 student warrant special attention: change from B-2 to F-1, change from F-2 to F-1, and change from M-1 to F-1 if the student has been erroneously classified M-1.

4.12.1.1 Change from B-2 to F-1 status

A nonimmigrant B-2 visitor for pleasure may wish to change to F-1 student status in various sets of circumstances:

1. The student has a B-2 visa bearing the notation "prospective student" (see Section 12.2.2.3). Consular officers are authorized to write "prospective student" on a B-2 visa issued to a person who has been admitted to a particular school and has a Form I-20A-B from that school, but intends to enter the United States more than 90 days before school opens; intends to become a student but has not yet chosen a school in the United States and wishes to visit more than one school before making a selection; needs to be in the United States to take an examination or have an interview that is required for admission to a school; or has credible evidence of admission to a U.S. school but does not have a Form I-20A-B. [OI 8 CFR 248.7(d)] A person with a B-2 visa marked "prospective student" should routinely be able to obtain a change to F-1 status.

2. Conditions in the preceding paragraph may apply, but the consular officer has neglected to write "prospective student" on the B-2 visa.

3. The student entered the United States in B-2 status and, after arriving in the country, decided to attend school, applied to a school, and was admitted and obtained a Form I-20A-B.

4. While outside the United States the student believed he or she would encounter difficulty in securing an F-1 visa from a consular officer, obtained a B-2 visa, and entered the country intending to apply to change to F-1 status here.

Individuals in the first three categories should be able to change to F-1 status, although those in categories 2 and 3 may have difficulty convincing INS of their good faith and should be instructed to provide whatever information or evidence is available to support their contention that they are entitled to change to F-1 status.

Individuals in the fourth category will be denied a change of status because they will have misrepresented their purpose in seeking admission to the United States by failing to reveal their intention to study when applying for a visa and when entering the country. Courts have held that a rapid sequence of events following entry to the United States may demonstrate an individual's preconceived intent to be a student and that the individual did not, in fact, enter the country as a visitor. [*Bitar v. United States*, 582 F. Supp. 417 (D Colo. 1983), citing *Sanghavi v. United States*, 614 F. 2d 511 (5th Cir. 1980)] Consequently, individuals who enter the United States in B-2 status either having already applied to schools or carrying school records with them and applying shortly after entry will be denied a change to F-1 status. DSOs should so advise such individuals. Most of these individuals will want to consider temporarily leaving the United States, obtaining an F-1 visa at a consular office, and reentering the country in F-1 status. Others, who anticipate difficulty in reentering the United States or wish reassurance that they face no unforeseen difficulties, will want to discuss their circumstances with an attorney experienced in immigration law. Such individuals may remain in the United States pending the outcome of a timely application for change of nonimmigrant status and may be able to plan their departure and reentry while the application is pending; individuals who remain in the United States pending adjudication of their applications for change to F-1, however, may be required to leave the United States on short notice, interrupting their program of study at an inconvenient or academically disadvantageous time (see also Voluntary Departure in Section 2.8).

The foreign student adviser should inform a prospective applicant for a change of status from B-2 to F-1 that the application may very likely be denied if the B-2 visa is not marked "prospective student."

4.12.1.2 Change from F-2 to F-1 status

A change of status from F-2 to F-1 requires application on Form I-539 with fee. Applications must be filed with a copy of Form I-94 Arrival/Departure Record, a properly executed Form I-20A-B, evidence of financial capability, and information about passport validity. Applications should be filed with the INS service center in the applicant's area of residence.

Although regulations at 8 CFR 248.3(c)(5) had stated that neither an application nor the payment of a fee was required for changing from F-2 to F-1 status, this is no longer the case. [*Federal Register*, 11 January 1994]

4.12.1.3 Change from M-1 to F-1 status

If a student has been incorrectly classified in M-1 status, the student may have the classification changed by submitting the following to the INS service center having jurisdiction over the school the student was authorized to attend: Form I-20A-B, Form I-94, and a letter from a DSO of the school the student was authorized to attend explaining the reason(s) the student's classification should be changed to F-1. No fee is charged. [OI 8 CFR 248.7(e)]

4.12.1.4 Attendance pending adjudication of change to F-1 status

An applicant for change of nonimmigrant status to F-1 may start attending school even before the application has been submitted. [8 CFR 248.1(c)] No form of employment is permitted, however, until the student receives notice of a favorable adjudication changing his or her status to F-1 (see Sections 4.9.2 and 4.9.3).

4.12.2 Change from F-1 student status

An F-1 student may apply for a change to any other nonimmigrant status for which he or she is eligible by completing either Form I-539, Application to Extend Status/Change Nonimmigrant Status or Form I-129, Petition for Nonimmigrant Worker, as appropriate, and submitting it to INS with the supporting documentation described in the instruction sheet attached to that form.

A change of status from F-1 to F-2 requires application on Form I-539 with fee. Applications must be filed with a copy of Form I-94 Arrival/Departure Record, the forms I-20ID of the principal alien and the applicant, proof of family relationship to the F-1 principal, evidence of financial capability, and information about passport validity. Applications should be filed with the INS service center in the applicant's area of residence.

INS will deny an application for change from F to J (exchange visitor) status if it appears that the change is desired primarily to enable the applicant's dependents to apply for permission to accept employment (see Section 4.14.4 and 9.14.4). An exception may be made, at the discretion of the INS, if the change in status will make the applicant subject to the 2-year foreign-residence requirement of Section 212(e) of the Act (see Section 9.10). [OI 8 CFR 248.5]

4.13 DEPARTURE OR TERMINATION OF STATUS

4.13.1 Responsibility of designated school official

A DSO is required to make available to INS upon request certain information pertaining to a student's enrollment or nonenrollment at the school. Form I-721 (Student Status Form), which required DSOs to report on the status of an INS-generated list of students purported to be under their school's F-1 visa sponsorship, has been temporarily discontinued. Future INS data-collection efforts are likely to take the form of a DSO being required to submit at specified intervals a school-generated report on the status of each F-1 student authorized to attend or attending the school. (These requirements are discussed in Sections 3.5.2 and 3.5.3.) There is no obligation, however, to inform INS at any other time of a student's failure to maintain status or of termination of the student's program of study.

4.13.2 Sailing Permit (Certificate of Compliance)

An F-1 student or F-2 dependents may be required to obtain a "sailing permit," known formally as a Certificate of Compliance with Income Tax Laws by Departing Aliens, from the Internal Revenue Service prior to leaving the United States for destinations other than Canada or Mexico. This certificate, which demonstrates that the F-1 student has met all federal income-tax obligations, is issued on Internal Revenue Service Form 1040C or 2063. No sailing permit is needed if the student or dependent, while in F-1 or F-2 status, respectively, received no gross income from sources inside the United States ... other than (1) Allowances to cover expenses incident to study in the United States (including expenses for travel, maintenance, and tuition), (2) The value of any services or accommodations furnished incident to such study, (3) Income derived in accordance with the employment authorizations at 8 CFR 274a.12 (b) and (c) (on-campus employment, off-campus employment under the pilot program, optional practical training, and curricular practical training), or (4) Interest on deposits described in section 871(i)(2)(A) of the Internal Revenue Code. [26 CFR 1.6851-2T(2)(ii), *Federal Register*, 3 March 1994, p. 10066] As most F-1 students or

F-2 dependents in lawful status are likely to qualify for exemption, the sailing permit will be of concern to few. For further information, consult Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8).

4.13.3 Surrender of documents

An F-1 student departing from the United States (other than for visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba) must surrender the Form I-94 to a representative of the carrier providing transportation out of the country at the time of boarding, a Canadian immigration officer at the United States–Canada border, or a U.S. immigration officer at the United States–Mexico border. An F-1 student should not surrender the Form I-20 ID upon departure; it facilitates any later reentry to the United States.

4.14 SPOUSE/DEPENDENT (F-2) STATUS

4.14.1 Eligibility

The spouse and unmarried minor children of an F-1 student may accompany the student to the United States or follow to join the student at a later date. The dependent family members will be accorded F-2 status provided they establish to the satisfaction of the consular officer and the immigration officer at the port of entry that they have sufficient funds to cover their expenses or that other arrangements have been made to provide for their expenses; "that they intend to leave the United States upon the termination of the status of the principal alien"; and, if the dependents are following to join the student, that "the F-1 student is, or will be within 60 days, enrolled in a full course of study or if the student is engaged in approved practical training following completion of studies." [22 CFR 41.61(b)(3) and 8 CFR 214.2(f)(3)]

4.14.2 Issuance of Form I-20A-B for F-2 dependents

If the dependent spouse and unmarried minor children will accompany the student to the United States, the Form I-20A-B that the student submits to the consular officer abroad with his or her application for an F-1 visa (see Section 4.3 and 4.4) may be used to request F-2 visas and entry in F-2 status for the spouse and unmarried minor children. If the dependents follow later to join the student, they will need to submit to the U.S. consular officer either a properly endorsed p. 4 (Form I-20 ID) of the student's current Form I-20A-B, if there has been no substantive change in items 4, 5, 7, or 8 on pp. 1 and 3 of the Form I-20A-B, or a new Form I-20A-B in the event of substantive changes. If the Form I-20 ID is the appropriate document, it is stated in the preface to the October 1991 regulations that "a reproduced copy of the F-1 student's original [Form] I-20 ID is acceptable if the copy bears an original endorsement for reentry by the DSO." [Supplementary Information to 8 CFR 214, *Federal Register*, 29 October 1991, p. 55612] As this guidance does not appear in the regulations themselves, it is presumed INS has communicated it directly to its officers and the Department of State. It may also be presumed that a photocopy would include both sides of the Form I-20 ID (pp. 3-4 of the Form I-20A-B). If a new Form I-20A-B is issued for the purpose of enabling dependents to obtain F-2 visas and join the student, box "d" in item 3 is checked. The names of the spouse and children are to be entered in the designated space on p. 4.

It is particularly important for the student to be aware of the additional expense of having the family in this country. The DSO should review expenses with the student and seek documentation of the student's ability to provide for the entire family before endorsing p. 4 of Form I-20A-B or issuing a new form.

4.14.3 Obtaining a visa and entering the United States

4.14.3.1 Aliens subject to passport and visa requirements

An F-1 student's spouse and unmarried minor children who are required to have a valid passport (or travel document) and visa for entry to the United States (see Sections 2.2.4 and 2.3.3) must apply for the F-2 visa at a U.S. consulate or embassy. The applicant must present the consular officer with a properly endorsed p. 4 (Form I-20 ID) of the student's current Form I-20A-B or with a new Form I-20A-B, as described in Section 4.14.2, and such other documents as may be required to demonstrate eligibility for F-2 status (see Sections 4.14.1 and 2.3).

If the visa application is approved, p. 4 (Form I-20 ID) of the student's Form I-20A-B or the new Form I-20A-B, whichever was presented, is returned to the applicant for use in applying for admission to the United States. When the family members arrive at the port of entry, they present their passports (or travel documents) and a properly endorsed p. 4 (Form I-20 ID) of the student's Form I-20A-B or the new Form I-20A-B to the immigration inspector. Upon admitting the alien to the United States, the inspector issues the alien a Form I-94, showing the date and place of entry, classification, and authorization to stay in the United States for duration of status. This means the F-2 dependents may remain as long as the F-1 student maintains status. F-2 dependents do not receive their own individual Form I-20 ID, as F-1 students do.

4.14.3.2 Aliens not subject to passport and visa requirements

The F-1 student's spouse and unmarried minor children who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) and who wish to enter the United States in F-2 status may apply directly to an immigration inspector at a port of entry. The procedure is otherwise the same as that followed by aliens required to meet passport and visa requirements.

4.14.4 Employment

Individuals holding F-2 status may not accept employment or engage in business under any circumstances. Employment, in this context, is defined as the rendering of services, part or full time, for financial or other compensation, including self-employment.

4.14.5 Extension of stay

Dependents in F-2 status are permitted to stay in the United States only to the extent that the F-1 student has received an extension of stay. The F-2 dependents maintain their status through the timely compliance of the F-1 principal with requirements for transfer of schools, continuation in the United States either to begin a new program or complete an ongoing program, or for practical training following completion of studies. Those procedures that require an F-1 student to submit Form I-538 also collect information about the F-2 dependents' names, dates and places of birth, and passport expiration dates. F-2 dependents are required to keep their passports valid at least 6 months into the future.

Infrequently, F-2 dependents, traveling either alone or in the company of the F-1 student, may apply for entry to the United States but be unable to satisfy the immigration officer of their eligibility for duration of status. The inspector at the port of entry may issue a Form I-515 (see Section 4.4.3) or defer the inspection of the dependents (see Section 14.2.3). The INS endorsement of the Forms I-94 of such dependents will specify an expiration date, usually 15 or 30 days from the date of inspection. On these occasions, the F-2 dependents should comply in a timely manner with the requirements detailed at Sections 4.4.3 and 14.2.3. As the status of F-2 dependents derives from that of the F-1 student, the F-1 student's documents will also be required. Successful compliance with these procedures results in the period of stay for the dependents being extended for duration of status.

4.14.6 Visits abroad and reentry

An F-2 dependent leaving the United States temporarily must be certain to have the documents necessary to enter the country visited and to reenter the United States (see Section 4.11). As in the case of the F-1 principal, the F-2 dependent needs a valid passport (or travel document) and visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and either a properly endorsed p. 4 of the student's current Form I-20A-B or a new Form I-20A-B, as described in Section 4.14.2. F-2 dependents are eligible for automatic extension of validity of visas on the same basis as F-1 students (see Section 4.11.2.2.3).

A special situation arises when the principal F-1 student travels outside the United States, leaving the F-2 dependent in this country. Since a dependent's stay in this country is valid only while the F-1 student maintains status here, it is not permissible for the dependent to remain in the United States while the F-1 student is absent from the country. However, when the F-1 student is absent from the country temporarily and for a short period of time, INS does not view the stay in the United States of F-2 dependent family members as being impermissible.

4.14.7 Change of status (nonimmigrant classification)

4.14.7.1 Change to F-2 status

A nonimmigrant alien may apply for a change to F-2 status if the spouse changes from another nonimmigrant classification to F-1, or if the alien becomes the spouse of an F-1 student. (For exceptions, see Section 4.12.1.) For both situations, the applicant must provide documentation proving financial support during the period of contemplated stay in the United States. In those instances when the dependent's spouse is changing to F-1 status, application for the change to F-2 status is included in the principal's application on Form I-539 with fee, and a copy of the dependent's Form I-94 is submitted along with that of the principal alien. In the case of marriage to an F-1 student, the nonimmigrant spouse (and children, if applicable) may apply for a change to F-2 status by submitting to INS a copy(ies) of the applicant's (or applicants') Form(s) I-94, the student's Form I-20 ID, proof of family relationship to the F-1 principal, financial documentation, a completed Form I-539, Application to Extend Status/Change Nonimmigrant Status, and the required fee (see Appendix 1).

A change of status from F-1 to F-2 also requires application on Form I-539 with fee. Applications must be filed with a copy of Form I-94 Arrival/Departure Record, the forms I-20ID of the principal alien and the applicant, proof of family relationship to the F-1 principal, evidence of financial capability, and information about passport validity. Applications should be filed with the INS service center in the applicant's area of residence.

4.14.7.2 Change from F-2 status

A nonimmigrant in F-2 status is eligible for a change to another nonimmigrant classification if able to meet all the requirements for the desired classification. The applicant must complete either Form I-539, Application to Extend Status/Change Nonimmigrant Status or Form I-129, Petition for Nonimmigrant Worker, as appropriate, and submit it to INS with the supporting documentation discussed in the instruction sheet attached to that form.

4.14.8 Departure or termination of status

A nonimmigrant holding F-2 status must terminate that status and depart from the United States "upon the termination of the status of the principal F-1 alien." [22 CFR 41.61(b)(3)]

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SECTION 5

M Status: Students

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I-94	Arrival/Departure Record
I-20	ID Copy
I-515	Notice to Student or Exchange Visitor
I-538	Application by Nonimmigrant Student for Permission to Accept Employment
I-539	Application to Extend Status/Change Nonimmigrant Status
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
M-242	Student and School Regulations

5.1 DEFINITION OF M STATUS

An M-1 visa and M-1 student status may be granted to an alien who seeks entry to the United States "for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution" authorized to enroll M-1 students. When applying for an M-1 visa, the individual must prove to a U.S. consular officer that he or she wishes to enter the United States temporarily and solely for the purpose of vocational study and that the alien has "a residence in a foreign country which he [or she] has no intention of abandoning." [Act 101(a)(15)(M)(i)] M-2 status is intended for spouses and dependents of M-1 students.

Schools are cautioned to use the M-1 category in only those cases where it is absolutely necessary. The M-1 classification contains restrictions not present in the F-1 regulations and wherever possible, institutions should use the F-1 program.

5.2 SCHOOL APPROVAL AND RESPONSIBILITIES

5.2.1 School approval

Before a school may enroll nonimmigrant M-1 students, it must secure approval from INS. A petition for approval is filed on Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students) and Form I-17A (Designated School Officials). The petition is filed with the district director of the INS office having jurisdiction over the place in which the school or school system is located. The following schools are considered to be vocational or nonacademic institutions and may be approved for attendance by M-1 nonimmigrant students: (1) a community college or junior college that provides vocational or technical training and awards recognized associate degrees, (2) a vocational high school, and (3) a school that provides vocational or nonacademic training other than language training. [8 CFR 214.3(a)(2)(ii)] A school with appropriate programs may be approved to enroll both F-1 and M-1 students (see Section 3.2.1.1.3).

INS approval of a school for attendance by M-1 students is "valid only as long as the school continues to operate in the manner represented in the petition." [8 CFR 214.3(e)(2)]

5.2.2 School responsibilities

A school enrolling M-1 students must agree to comply with the record-keeping and reporting requirements presented in 8 CFR 214.3(g)(1) and (2). These requirements are discussed in Section 3.5. Failure to fulfill these responsibilities can result in withdrawal of school approval (see Section 3.6.1). [8 CFR 214.4]

5.3 Issuance of Form I-20M-N to M-1 Students

Federal regulations provide that an approved school may issue a Form I-20M-N to a foreign applicant accepted for enrollment in a full course of study only after the following conditions are met:

1. The prospective student has made a written application to the school.

2. The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents have been received, reviewed, and evaluated at the school's location in the United States.

3. The appropriate school authority has determined that the prospective student's qualifications meet all standards for admission.

4. The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study (see Section 3.4.1). [8 CFR 214.3(k)]

The Form I-20M-N must be issued in the United States and signed by a designated school official (DSO). [8 CFR 214.3(k)] It may be issued only to "aliens who are ... M-1 students or who are seeking ... M-1 status."

Currently, two versions of the Form I-20M-N are in use. The older form consists of 8 pages and was issued 1 May 1983. A more streamlined version was issued on 3 May 1990 and consists of 4 pages. Since both forms are in circulation and accepted by INS, instructions on the proper use of both forms appears throughout this section. Until INS retires the older form, both are acceptable, although designated school officials (DSOs) will likely appreciate the relative simplicity of the May 1990 version and are encouraged to use it.

For purposes of clarity, the complete Form I-20M-N/I-20 ID, which contains both a school and a student copy will be referred to throughout this section as the I-20M-N. The I-20 ID (Student) Copy will be referred to as the I-20 ID.

5.3.1 Students properly issued Form I-20M-N

When a school is approved to enroll both F-1 and M-1 students, the decision to document a foreign student as an M-1 student using Form I-20M-N should be made only after determining that the applicant intends to pursue a single, terminal vocational or technical program. A student whose "primary intent is to pursue vocational or technical training" must be documented as an M-1 student. [8 CFR 214.3(a)(2)(iii)] Students admitted to programs that can be considered prebaccalaureate or preprofessional should be documented as F-1 students with Forms I-20A-B, if the school's approval permits. When a school is approved to enroll both F-1 and M-1 students, the school's DSOs are responsible for determining whether individual applicants should be documented as F-1 or M-1 students. Schools may wish to design their admission applications so that applicants must specify if their primary intent for coming to the United States is to pursue "vocational or technical training" or to pursue "studies in liberal arts, fine arts, language, religion, or the professions"; the applicant's intent must be considered in determining whether F or M documentation is appropriate. [8 CFR 214.3(a)(2)(iii)] Upon admission to the United States, a student issued a Form I-20M-N must engage primarily in vocational or technical training, while a student issued a Form I-20A-B must engage primarily in studies in the liberal arts, fine arts, language, or religion, or in studies leading to the professions.

A student whose primary intent is to pursue vocational or technical training and who seeks admission for language training at the same school "solely for the purpose of being able to understand the vocational or technical course of study" must be documented on Form I-20M-N. [8 CFR 214.3(a)(2)(iv)]

5.3.2 Educational background

In considering a foreign applicant, the school should satisfy itself that the applicant has successfully completed a course of study equivalent to that normally required of a U.S.-educated applicant seeking admission to the school for the same vocational or technical program.

5.3.3 Language proficiency

The applicant should be adequately proficient in English to pursue the course of studies, or arrangements must be made to provide the prospective student with instruction in English.

Institutions may require the foreign applicant to take a standardized English proficiency test as a condition of admission. Such tests are administered at various centers in the United States and abroad. Proficiency in

English need not be required if the institution in which the student will enroll conducts its courses in a language in which the alien is proficient or will enroll the applicant for a full course of study in English. [22 CFR 41.61(b)(iii)] If facilities exist at the school to provide full-time instruction in English, evidence of language proficiency can reasonably be obtained through testing upon arrival at the school to determine whether the student should be placed in English or in vocational or technical programs.

5.3.4 Financial verification

The school is required to obtain verification that the applicant has adequate funds to provide for expenses at the school without resorting to unauthorized employment. [8 CFR 214.3(k)(2) and 214.4(a)(1)(ix)] (M-1 students are not allowed to accept employment except for practical training after completion of their course of study—see Section 5.7.2.) Funds may come from scholarships, fellowships, sponsoring agencies, the student's family, or any dependable source. The school should be satisfied that funds are guaranteed at least for the student's first year of study at the school and that, barring unforeseen circumstances, funding will be available from the same or equally dependable sources for subsequent years.

If the student is depending on funds from a source outside the United States, the school in which the foreign applicant plans to enroll is well advised to determine whether restrictions exist on the transfer of funds from the country in which they are held. In the event of such restrictions, the student should present evidence that they will not prevent the funds from being transferred, or the student may be required to make an advance deposit of part or all of a year's expenses. The Higher Education Reauthorization Act of 1986 (PL 99-498) permits such advance deposit requirements.

5.3.5 Full course of study

In issuing Form I-20M-N to a foreign applicant, the DSO certifies that the applicant is admitted to the institution for the purpose of enrolling in a full course of study that will lead to the attainment of a specific educational or vocational objective. A school may not issue a Form I-20M-N to anyone who is not expected to be engaged in a full course of study as defined in Section 5.6.2. [8 CFR 214.3(k)(4) and 214.4(a)(1)(x)]

5.4 OBTAINING A VISA AND ENTERING THE UNITED STATES

To enable an applicant to obtain an M-1 visa and/or enter the United States for the purpose of undertaking a full course of study as a vocational student, the DSO issues the student a properly executed Form I-20M-N. It is essential to keep in the school's records a copy of each Form I-20M-N issued.

The applicant must complete pages 2 and 7 of the Form I-20M-N (1 May 1983) or pages 1 and 3, item 11, Form I-20M-N/I-20 ID (rev. 3 May 1990). These pages state a number of conditions a student accepts when granted M-1 status. The DSO, as well as the applicant, should be thoroughly familiar with these conditions. The applicant should retain pages 3, 4, and 7 of the Form I-20M-N (1 May 1983) or pages 3 and 4 of Form I-20M-N/I-20 ID (rev. 3 May 1990) after entry into the United States.

Although an applicant may meet all the institution's admission requirements and seem eligible for an M-1 visa, it is the U.S. consular officer who decides whether the applicant will be granted a visa (see Section 2.3.4 and Section 4.4).

5.4.1 Aliens subject to passport and visa requirements

An alien who is required to have a valid passport and visa for entry to the United States (see Sections 2.2.4 and 2.3.2) applies for an M-1 visa at a U.S. consulate or embassy. In Taiwan, application is made at the American Institute in Taiwan. The applicant presents a valid passport and Form I-20M-N, with the required pages of the form completed (see Section 5.4). The consular officer may request other documents, such as proof of English-language proficiency and verification of financial support (see Section 2.3.3) to establish that the applicant meets all the requirements for M-1 status.

Schools are expected to make all possible efforts to ensure that the Forms I-20M-N they issue reach their intended recipients in time for the latter to acquire M-1 visas in the normal way. The Foreign Affairs Manual (FAM) does not permit a consular officer to issue B-2 prospective student visas for intending M-1 students under any circumstances. Thus, an intending M-1 nonimmigrant would not be eligible for a prospective student visa (see Section 5.12.1).

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3.1). The Form I-20M-N is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents the passport (which must be valid for at least 6 months beyond the initial contemplated period of stay), visa, evidence of financial support, and the Form I-20M-N to the immigration official. If the person has previously been in the United States in F-1 or M-1 status and has been issued a Form I-20 ID, he or she presents that as well. Before admitting the applicant to the United States, the immigration official must be satisfied that the applicant is destined to and intends to attend the school specified in the visa. [8 CFR 214.2(m)(1)(i)(B)]

Upon admitting the student to the United States, the immigration officer issues the student a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an M-1 student, the expiration date of that status, and an 11-digit admission number. The admitting immigration official also gives the student page 3 of the Form I-20M-N (1 May 1983), after marking it "I-20 ID (Student) Copy." Alternately, the official gives the student pages 3-4 of the Form I-20M-N (3 May 1990), which is already marked "I-20M-N (Student) Copy" (referred to herein as the I-20 ID; the yellow I-20 ID Copy is no longer used for M-1 students as of 1 August 1988). The admission number serves as the student's identification number in the INS's data base. By means of this data base, INS intends to keep track not just of the arrivals and departures of M-1 students, but of their fields of study, degree objectives, transfers of schools, and several other matters. M-1 students will submit their Forms I-20 ID with applications for many benefits, and the Form I-20 ID will become the record of INS decisions affecting their status in the United States.

The admission number is intended to be an alien's lifelong identifying number for study in F-1 or M-1 status. Students in M-1 status are required to keep the Form I-20 ID in their possession at all times and not to surrender it upon leaving the United States. [8 CFR 214.2(m)(2)] An exception to this is permitted when the Form I-20 ID must be sent to INS in conjunction with an application.

The Form I-94 (Arrival/Departure Record), by contrast, is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada, Mexico, or adjacent islands other than Cuba. When an M-1 student who has surrendered Form I-94 upon departure subsequently reenters the United States, the student is issued a new Form I-94, but not a new Form I-20 ID. The preprinted admission number on the new Form I-94 is stricken and replaced with the student's Form I-20 ID admission number. Anyone who receives a Form I-20 ID must retain it as long as there is any possibility that he or she will seek to travel and reenter the United States in F-1 or M-1 status. An alien seeking admission to the United States in F-1 or M-1 status who has previously been in the United States as an F-1 or M-1 student but does not know his or her admission number may experience delays at the port of entry while INS searches its records for the number.

M-1 students are admitted to the United States until a specified date (see Section 5.5.1). The initial period of authorized stay will be noted on Form I-20 ID and Form I-94, and will never exceed 1 year. The Form I-94 in many cases will also indicate an additional 30 days within which the M-1 student is to depart the United States. [8 CFR 214.2(5)] The initial period of stay may be extended to allow completion of the original course of study (see Section 5.8). An M-1 student's permission to remain in the United States is not valid beyond the date shown on the student's Form I-20 ID and Form I-94, even though the Form I-20M-N may carry an expected date of completion of the program that is beyond that date.

Additional information about the use of Form I-20 ID appears throughout this section.

5.4.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.2.4). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an M-1 student. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

5.4.3 Temporary admission with Form I-515

If a prospective M-1 student appears at a port of entry and does not have a properly completed Form I-20M-N but otherwise appears eligible for admission as an M-1 student, the INS inspector can admit the student for a period of 30 days and give him or her a Form I-515 (Notice to Student or Exchange Visitor). That form instructs the alien to obtain a properly completed Form I-20M-N from the school the student is attending and send it, along with the Form I-20 ID (if the student has one) and a copy of Form I-94, to the INS, which may then grant the alien permission to stay for an appropriate period up to 1 year. The INS will note the extension on the student's Form I-20 ID. [OI 8 CFR 214.2(m)(5)]

If the immigration inspector at the port of entry is unable to ascertain an applicant's eligibility for admission as an M-1 student, the inspector may parole the alien into the United States for "deferred inspection." When that happens, the alien is required to appear in person at the INS office having jurisdiction over the school the student plans to attend (see Section 14.2.3).

5.5 AUTHORIZED STAY FOR M-1 STUDENT

An M-1 student will be admitted to the United States for a period not to exceed 1 year and may be granted extensions of stay in increments not exceeding 1 year. [8 CFR 214.2(m)(5) and 214.2(m)(10)]

5.5.1 General rule

An M-1 student is authorized to remain in the United States for the period of time necessary to complete the course of study indicated on Form I-20M-N plus 30 days within which to depart from the United States or to apply for change of status, or for 1 year, whichever is less. [8 CFR 214.2(m)(5)] M-1 students are not eligible for "duration of status" (see Section 4.4.1.3 for discussion of duration of status for F-1 students).

5.5.2 Single educational objective

"An M-1 student may not change educational objective." [8 CFR 214.2(m)(12)] M-1 students, unlike F-1 students, cannot change fields of study (also see Section 5.12.2.1 regarding prohibition against changing to F-1 status).

5.6 MAINTENANCE OF STATUS

5.6.1 General requirements

An alien admitted to the United States in M-1 status must meet certain obligations in order to maintain that status. The student must continue to carry a full course of study (see Section 5.6.2) at the school the student is authorized to attend. The student must not accept employment (see Section 5.7) and must keep his or her passport valid (see Section 2.2.4). The student must apply for an extension of stay if he or she wishes to remain in the United States beyond the period of time for which he or she was admitted. An M-1 student who wishes to transfer to another school must apply to INS for approval prior to making the transfer (see Section 5.9). An M-1 student who fails to maintain status may be deported from the United States.

5.6.2 Full course of study

A full course of study for an M-1 student must lead to attainment of a specific educational or vocational objective. A full course of study for an M-1 student is defined by the regulations as follows:

(i) Study at a community college or junior college, certified by a school official to consist of at least 12 semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of 12 semester or quarter hours are charged full-time tuition or considered full time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in 8 CFR 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) and (2) of 8 CFR 214.3(c), and which has been certified by a designated school official to consist of at least 12 hours of instruction a week, or its equivalent as determined by the district director;

(iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in 8 CFR 214.3(a)(2)(iv), certified by a designated school official to consist of at least 18 clock hours of attendance a week if the dominant part of the course of study consists of shop or laboratory work; or

(iv) Study in a vocational or other nonacademic high school curriculum, certified by a DSO to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation. [8 CFR 214.2(m)(9)]

5.6.3 Vacation period

An M-1 student attending an approved institution is allowed to take the summer as a vacation period and remain in status only if (1) the student has completed an academic year of studies prior to the summer vacation, (2) the student intends and is eligible to enroll at the same school during the term or semester immediately after the vacation, and (3) the summer vacation period at the school the M-1 student is enrolled in is normally observed as a vacation. [OI 8 CFR 214.2(m)(2)]

Although not explicitly stated in the regulations or the OIs, it is presumed that M-1 students may not use other semesters or terms as vacation if they wish to remain in the United States in M-1 classification during that vacation.

5.6.4 Special students

Although this paragraph is based on a previous version of the Operations Instructions, it presumably still represents INS's view of this situation. M-1 students may be admitted to an approved school for a program of study that will not result in the awarding of a degree or certificate, provided the course of study is full time and the student can "demonstrate that he or she has a specific educational objective." [OI 8 CFR 214.2(m)(2)] This interpretation of the requirement that M-1 students have a specific educational objective is intended to permit the lawful admission of "special students" who do not intend to complete the normal curriculum or a specific degree program. Previous OIs gave the example that a "community college may issue a Form I-20M-N to a special student who may become a degree candidate after making up certain academic deficiencies." Presumably, special students may also include students who wish to take refresher courses or a selection of classes that do not normally constitute a degree or certificate program. Special students must, however, pursue a full course of study and have an educational objective.

5.6.5 Disclosure of information; criminal activity

M-1 students, like all other nonimmigrants, are required to disclose fully and truthfully all information requested by INS regardless of whether the information is material. Failure to do so constitutes a violation of status. [8 CFR 214.1(f)] They are also required, as a condition of their admission, to obey all laws that prohibit the commission of crimes of violence. Conviction of a crime of violence for which a sentence of more than 1 year could be imposed, regardless of whether such a sentence is in fact imposed, constitutes a violation of status. [8 CFR 214.1(g)]

5.7 EMPLOYMENT

5.7.1 General prohibition

Employment means the rendering of services on either a part-time or full-time basis for compensation, financial or otherwise, including self-employment. An M-1 student may not accept employment or engage in business except for practical training, and then only after securing INS approval. The prohibition of employment for M-1 students applies to both on-campus and off-campus employment. [8 CFR 214.2(m)(13)]

5.7.2 Practical training

An M-1 student may be eligible to accept employment in order to obtain practical training upon completion of his or her studies. [8 CFR 214.2(m)(14)] Permission to engage in practical training is not automatically granted, and care must be exercised in the preparation of practical-training applications.

5.7.2.1 Limitations on training period

An M-1 student may be authorized to undertake practical training only upon completion of the course of study. The DSOs' recommendation to engage in practical training will be noted on the student's Form I-20 ID. The notation will include the dates on which permission begins and ends. No employment is permitted until the student is issued the Employment Authorization Document (EAD) by INS (see Section 5.7.2.3). The length of practical training granted to an M-1 student is dependent on a one-to-four ratio of training to study. The single period of practical training will be for a "period of time equal to 1 month for each 4 months during which the student pursued a full course of study, but not to exceed 6 months, plus an additional 30 days within which to depart from the United States." [8 CFR 214.2(m)(14)(iii)]

If the training sought by an M-1 student cannot be completed within the maximum training period for which he or she is eligible, permission for training may not be granted. A change to another nonimmigrant status is called for in these cases. That other nonimmigrant status may be H-1B (if the student was a member of the professions before the M-1 course of study), H-3 (for trainees at a lower or less-specialized level of education whose M-1 course of study is not necessary to qualify them for H-3 classification), or J-1 (if the graduate's prospective employer or other appropriate organization is the sponsor of an exchange-visitor program whose activities encompass the proposed training—see Sections 2.7 and 5.12).

M-1 students are not eligible for cooperative education or other forms of curricular practical-training programs. Employment prior to completion of the course of study is prohibited as well (see Section 5.7.1).

5.7.2.2 Qualifications

An M-1 applicant seeking permission for practical training must have completed a course of study. The training an applicant seeks must be related to the major field of study. In addition, the training sought must, in the opinion of a designated official of the school the student is leaving, be unavailable to the student in the student's country of residence. [8 CFR 214.2(m)(14)(ii) and 274a.12(c)(6)]

5.7.2.3 Application procedure

Application for practical training permission begins with the student completing section A of Form I-538 (8 July 1991). The DSO should complete the section certifying the student's status, indicating that a period of practical training related to the student's course of study is recommended and that, upon information and belief, such training is unavailable to the student in the student's country of residence. Note that because the Form I-538 does not request the DSO to state that the practical-training employment is unavailable in the student's home country, it is recommended that the DSO state on the reverse side of the form in the "Comments" section that to his or her knowledge and belief, such training is unavailable to the student in the student's country of residence. The form also requires that the school certify that the student has been in student status for 9 months before being qualified for practical training. This form is obviously designed for use with F-1 students, since M-1 vocational students have no 9-month in-status rule as a prerequisite to practical training. It is suggested that the DSO check box A and alter the remaining sentence to read, "The student is eligible for the requested practical training in accordance with INS regulations at 8 CFR 214.2(m)." The DSO may wish to consult with or obtain a letter from the student's academic adviser endorsing the recommendation for practical training before signing the Form I-538 and may wish to submit a copy of that letter along with the application.

DSOs recommend practical training by notifying the INS student data processing center in London, Kentucky, submitting the completed Form I-538 directly to the center. The endorsement for practical training on the reverse side of the Form I-20M-N (Student) Copy should read as follows: "Practical training is recommended in the field of (student's field of study) beginning (date of completion of course of study)."

It is not necessary for the student to have a job offer at the time the application for M-1 practical training is filed, as long as the school has recommended a period of practical training.

The student must then apply for work permission from the INS on Form I-765 and obtain an Employment Authorization Document. [8 CFR 214.2(m)(14)(ii) and (iii)] The application is submitted with the student's I-20 ID and fee to the INS office having jurisdiction over the place of employment. A personal appearance is necessary to obtain the EAD. The application must be submitted no earlier than 60 days before or 30 days after completion of studies. [8CFR 214.2(m)(14)(ii)]

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An M-1 student with permission for practical training may be issued a new Form I-20M-N for the purpose of reentering the United States after a temporary absence. Time spent abroad is charged against the student's maximum practical training time. The student must have obtained permission for practical training prior to departing the country. [8 CFR 214.2(m)(14)(iv)] Although not stated in the regulations, evidence of practical training permission would be an unexpired EAD. Authorization for practical training is automatically suspended if there is a strike, lockout, or other work stoppage at the place of employment.

5.7.2.4 Work required in a regularly prescribed curriculum

An M-1 student may not accept employment except as practical training after completion of the course of study. An M-1 student may not accept employment in a cooperative education program, a study-related position, or in any other capacity other than as a practical trainee after completing the course of study.

5.7.2.5 Social Security coverage

Prior to the Tax Reform Act of 1984, and subsequent regulations promulgated 24 April 1992, contribution for Social Security (FICA tax) were not to be withheld from wages of M-1 students if the employment was authorized. Recent changes in the regulations however, make M-1 students subject to FICA tax withholdings if they are "residents for tax purposes." Generally, M-1 students become "residents" for tax purposes after they have been in the United States for 5 years. The April 1992 regulations were retroactive to 1 January 1985, the effective date of the 1984 law. [*Federal Register*, 27 April 1992, p. 15237]

5.7.2.6 Income tax obligations

Information on an M-1 student's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8). Earnings from practical-training employment will generally be subject to federal and state income taxes (unless a tax treaty provides exemption).

5.8 EXTENSION OF STAY

An M-1 student must keep valid his or her permission to stay in the United States, as noted on the Form I-20 ID. Since all M-1 students are admitted to the United States for a specific period of time, they must apply to INS for extension of stay if they wish to remain beyond that time.

Extensions will be made using Form I-539. If a student applying for an extension of stay is seeking a school transfer, the Form I-20M-N for the new school must accompany the application (see Section 5.9 for limitations on school transfers). Current regulations do not allow an M student to transfer using the notification procedure in place for F students.

An extension of stay is processed by submitting Form I-539, the required fee (see Appendix 1), the student's Form I-20 ID, the Form I-20M-N (if applicable), and copies of the Forms I-94 of dependents, if any, to the INS office having jurisdiction over the student's current school, not less than 15 and not more than 60 days before the student's authorized stay expires. The student should not send his Form I-94 or passport to INS. (The passport expiration date is indicated on the Form I-539.) Form I-20 ID, endorsed to show INS approval or denial of the application, is returned to the student. Extensions given an M-1 student will not be noted on Form I-94 but on Form I-20 ID. [8 CFR 214.2(m)(10)]

Generally, an M-1 student seeking an extension of stay who is the beneficiary of an approved immigrant visa petition or of an approved labor certification will not be granted the extension. Although the existence of an approved immigrant visa petition or labor certification is not certain grounds for denial of an extension of stay, it is usually difficult for the alien to convince an INS officer that he or she intends to return home after completion of the anticipated program of study. [OI 8 CFR 214.2(m)(7)] If the application for extension is granted, the student and the student's dependents, if any, will receive extensions of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States or to apply for change of status, or for 1 year, whichever is less. [8 CFR 214.2(m)(10)]

An M-1 student who has been compelled by illness to interrupt or reduce a course of study may be granted an extension of stay without being required to change nonimmigrant classification, if it can be established that the student will pursue a full course of study upon recovery from the illness. [8 CFR 214.2(m)(10)(iii)]

While the application for extension of stay is pending, the M-1 student is considered to be legally in the United States as long as the student has met and continues to meet all the requirements for maintaining his or her status.

Occasionally, a student will find it necessary to leave the United States before INS returns the Form I-20 ID. The adviser may want to issue a letter to the student certifying the student's academic status and issue a duplicate Form I-20M-N that includes the student's admission number. The lack of a Form I-20 ID will not prevent the student's departure from the United States, although it may prevent his or her entry into Canada or Mexico (see Section 5.11.1).

5.9 TRANSFER OF SCHOOLS

5.9.1 Conditions for transfer

An M-1 student may not transfer schools after 6 months in M-1 status, unless the student is unable to remain at the school to which he or she was initially admitted "due to circumstances beyond the student's

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control." Otherwise, an M-1 student may be granted permission to transfer schools if the student

(A) Is a bona fide nonimmigrant;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer. [8 CFR 214.2(m)(11)(i)]

The regulations do not specify a minimum period of full-time enrollment at the originally authorized school, although it is clear that the student must have been enrolled for at least some period of time. If the student has not enrolled at all, the student must apply for reinstatement to M-1 status (see Section 5.10) for the purpose of attending the new school.

5.9.2 Procedure for transfer

An M-1 student must apply for permission to transfer between schools on Form I-539 accompanied by the student's Form I-20 ID and copies of the Forms I-94 of the student's spouse and children, if applicable. The Form I-539 and required fee (see Appendix 1) must also be accompanied by Form I-20M-N, properly and completely filled out by the student and by the DSO of the school which the student wishes to attend. The student must submit the application for school transfer to the INS office having jurisdiction over the school the student was last authorized to attend. Sixty days after having filed an application for school transfer, an M-1 student may effect the transfer, subject to approval or denial of the application. An M-1 student who transfers without complying with this regulation or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be retroactive to the date of filing the application, and the student will be granted an extension of stay for the period of time necessary to complete the course of study indicated on Form I-20M-N plus 30 days within which to depart from the United States or for 1 year, whichever is less. [8 CFR 214.2(m)(11)(ii)]

The regulatory provisions concerning school transfer appear to cause a problem for an M-1 student who wishes to transfer schools but who cannot, for lack of required documentation or for some other reason, apply for permission to transfer at least 60 days in advance of the opening of classes at the new school. If the student can apply at least 60 days in advance, the student can enroll in the new school, even though there has not yet been a reply to the application. But if the student must enroll in the new school before 60 days have passed after submitting the application for transfer, and if the student has not yet received a response to the transfer application, the student would be in violation of the regulations in 8 CFR 214.2(m)(11)(ii). The student would also be considered out of status if he or she does not continue in school. To alleviate this potential problem, INS has directed its officers to approve transfer applications if the only reason for denying the application would be that the student effected the transfer without permission prior to the 60-day waiting period and did so due to circumstances beyond his or her control. An application for transfer submitted less than 60 days before the transfer is to be effected should be accompanied by a letter from a designated official of the new school the student will be attending "explaining in detail why the application could not have been submitted earlier." [OI 8 CFR 214.2(m)(8)(ii)]

INS will note approval of the school transfer and the name of the new school on Form I-20 ID and will return the form to the student.

5.9.3 Failure to attend authorized school

If an M-1 student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to student status (see Section 5.10). [8 CFR 214.2(m)(11)(iii)] INS will approve an application for reinstatement to M-1 status only if the student provides extraordinary justification for the failure to attend the school he or she was last authorized to attend. The regulations do not specify a minimum period of full-time enrollment at the originally authorized school, although it is clear that the student must have been enrolled at the last school for at least some period of time. If the student has not enrolled at all, the student must apply for reinstatement to M-1 status (see Section 5.10) for the purpose of attending the new school.

An M-1 student who has been granted a school transfer but decides to remain at the old school may do so without violating his or her nonimmigrant status if the designated official at the old school submits the following documents to the INS office having jurisdiction over that school: "(i) a current Form I-20M-N; [and] (ii) a letter of explanation signed by the designated school official." If the student is not, and has not otherwise been, in violation of his or her status, INS will adjust its files to reflect the nontransfer. No fee is required for this request. [OI 8 CFR 214.2(m)(9)]

5.10 REINSTATEMENT TO STUDENT STATUS

An M-1 student who has overstayed the authorized period of stay granted by INS, or who has otherwise failed to maintain M-1 student status (see Section 5.6), may be reinstated, at the discretion of the district director, to lawful M-1 student status only if

(A) The student establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful M-1 status would result in extreme hardship to the student;

(B) The student makes a written request for reinstatement accompanied by a properly completed Form I-

20M-N from the school the student is attending or intends to attend and the student's Form I-20 ID;

(C) The student is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20M-N;

(D) The student has not been employed without authorization; and

(E) The student is not deportable on any ground other than section 241(a)(2) [overstay] or (9) [failure to maintain status] of the Act. [8 CFR 214.2(m)(16)(i)]

The application for reinstatement should include the following: Form I-539, required fee (see Appendix 1), written request for reinstatement, properly completed Form I-20M-N, and the student's Form I-20 ID. This information should be submitted to the INS office having jurisdiction over the school which the student wishes to attend, in other words, the school that issued the Form I-20M-N submitted with the application.

If INS reinstates the student, the student will receive his or her Form I-20 ID so noted and the school will receive Form I-20N so noted. This applies if the older version of Form I-20M-N (1 May 1983) is used. Otherwise, the student will be notified on page 3-4 of the Form I-20 (rev. 3 May 1990) Student Copy. If INS decides not to reinstate the student, the student may not appeal the decision. However, the student may file a motion for reconsideration of the decision (see Sections 14.3 and 14.3.2.3).

5.11 VISITS ABROAD AND REENTRY

Whenever an M-1 student wishes to leave the United States temporarily and return to continue his or her studies, the student must carry appropriate documentation to permit entry to another country and reentry to the United States. The reentry documentation will generally include a new Form I-20M-N or page 3-4 of the student's last Form I-20M-N, endorsed by the DSO within the previous 6 months, and a valid passport and visa (unless the student is not subject to the passport and visa requirements).

5.11.1 Entry into another country

An M-1 student who wishes to visit temporarily his or her country of citizenship or permanent residence will be allowed to enter that country if the student holds a valid passport or other travel document issued by that country. Specific visa requirements for entry to other countries should be obtained directly from the appropriate embassy or consulate in the United States.

An M-1 student who wishes to visit Canada must have the following documents in his or her possession: (1) a valid passport; (2) a currently endorsed page 3-4 of Form I-20M-N or a recently issued Form I-20M-N; (3) a valid Form I-94; (4) evidence of return transportation arrangements; (5) sufficient funds for the contemplated visit to Canada; and (6) at certain border-crossing stations, a letter from the foreign student adviser confirming that the holder is a full-time student at the school.

In addition, an M-1 student who is not a citizen or a national of a country whose citizens or nationals are exempt from the Canadian visitor-visa requirement will need a Canadian visitor visa. A list of exemptions from the Canadian visitor-visa requirement appears in Appendix 10. It is advisable to apply for the Canadian visa at least 2 weeks before the anticipated date of travel. The application must be accompanied by the documentation enumerated above, plus a fee.

5.11.2 Requirements for reentry into the United States

An M-1 student must have the following documents in order to reenter the United States after a temporary absence to resume attendance at the same school: (1) a valid passport and a valid visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2), and (2) a properly endorsed page 4 of Form I-20M-N or a new Form I-20M-N if there have been substantive changes in the information on the Form I-20M-N issued earlier.

If reentry is for the purpose of beginning attendance at a new school, the visa may be amended by a consular officer to show the name of the new school. Consular officers will make notations on existing visas for a new school upon a request supported by a Form I-20M-N from the new school and evidence of continued financial ability and nonimmigrant intent. If the M-1 student does not have a notation of the new school on the M-1 visa, INS may admit the student for attendance at the new school provided that

1. the student presents a Form I-20M-N from the school the student intends to attend;

2. the student presents documentary evidence of financial ability to attend the school that issued the Form I-20M-N; and

3. the student establishes that failure to have the school that the student intends to attend specified on his or her visa resulted from circumstances beyond the student's control, or that failure to be admitted would result in extreme hardship to the student. [OI 8 CFR 214.2(m)(4)] It is not possible to reissue an M-1 visa inside the United States.

An M-1 student whose visa has expired and who needs a new visa to reenter the United States after a temporary absence must apply for the new visa at a U.S. embassy or consulate. Although it is possible for an alien to obtain a new M-1 visa in a foreign country other than the student's own, the alien may face more stringent requirements than if the student were in his or her own country. In addition to proving eligibility for an M-1 visa, the student may have to convince the consular officer that there is a legitimate reason for making the visa application outside the student's own country. In many instances the consular officer in the third country will find it necessary to check with the U.S. consulate or embassy in the student's place of residence. This can be time consuming. Further, if information is requested by cable rather than diplomatic mail in order to save time, cable charges will be assessed against the visa applicant.

The documents needed for a new visa are a valid passport, a current photograph, a properly endorsed page 3-4 of Form I-20M-N or a recently issued Form I-20M-N, and proof of financial capability for continuing studies.

5.11.3 Automatic extension of validity of visas

An expired M-1 visa may be considered to be automatically extended to the date of application for readmission to the United States (and therefore the visa in the passport need not have a current expiration date) provided the M-1 student

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory;
2. has maintained and intends to resume his or her status as an M-1 student and is reentering the United States prior to the expiration of the previously authorized stay;
3. presents either a currently valid page 3-4 of Form I-20M-N or a new Form I-20M-N issued by the school he or she is authorized to attend that contains the expiration date of the previously authorized stay;
4. is in possession of a valid passport;
5. presents an unexpired Form I-94; and
6. does not require the authorization of temporary admission to the United States under section 212(d)(3) of the Act (a provision for waiver of inadmissibility—see Section 14.5.1). [22 CFR 41.112(d)]

Furthermore, a person who entered the United States in a classification other than M-1 student, but whose status was subsequently changed to M-1 student, may be considered to have the previous visa automatically extended and converted to an M-1 visa if the student meets the conditions stated above.

Thus, under these circumstances, an M-1 student whose visa has expired may not have to apply for a new visa at a consular post outside the United States. In order to prevent delays at the port of entry, it may be wise to mention in a letter carried by the student that the student is eligible for automatic revalidation (or conversion) of visa under 22 CFR 41.112(d).

5.12 CHANGE OF STATUS

5.12.1 Change to M-1 student status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J may apply for a change to M-1 status if the alien has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-539 (Application to Extend Status/Change Nonimmigrant Status). The Form I-539 must be accompanied by a properly executed Form I-20M-N from the admitting institution. The applicant must complete pages 2 and 7 on Form I-20M-N (1 May 1983) or pages 1 and 3 on Form I-20M-N/I-20 ID Copy (rev. 3 May 1990); a copy of the applicant's Form I-94; evidence of financial support; and the required fee (see Appendix 1).

INS cannot approve a change to M-1 status if the applicant "intends to pursue the course of study solely in order to qualify for a subsequent change" to H temporary-worker status. [8 CFR 248.1(c)]

A nonimmigrant B-2 visitor for pleasure may wish to change to M-1 student status under various sets of circumstances:

1. The student entered the United States in B-2 status and after arriving here decided to attend school. The student is admitted to a school and obtains a Form I-20M-N after arriving in the United States.
2. The student believed while outside the United States that he or she would encounter difficulty in securing an M-1 visa from a consular officer, got a B-2 visa instead, and entered the United States intending to apply to change to M-1 status here.

Individuals in the first category may be able to change to M-1 status, although they may have difficulty convincing INS of their good faith. The adviser should caution such individuals that their applications may be denied. Individuals in this category should be instructed to provide INS with whatever information or evidence is available to support their contention that they are entitled to a change to M-1 status.

Those in the second category will be denied a change of status and may be found to be in violation of section 212(a)(6) of the Act regarding misrepresentation in applications for immigration benefits. In most cases, an alien who is denied a change of nonimmigrant classification will be given a voluntary departure date approximately 30 days after the date of the INS decision (see Section 14.3.2.5).

Although OIs allow for the possibility of an intending M-1 student's receiving a B-2 prospective student visa if the student plans to enter the country more than 90 days before the reporting date on Form I-20M-N [OI 248.7(d)], Department of State guidelines in the Foreign Affairs Manual do not allow for such a visa to be issued to intending M-1 students under any circumstances.

A change of status from M-2 to M-1 requires a formal application on Form I-539 with fee. The request must be accompanied by a copy of the applicant's Form I-94; a properly executed Form I-20M-N; evidence of financial capability; and information about passport validity. The applicantion should be sent to the service center having jurisdiction over the student's place of temporary residence in the United States. [8 CFR 248.3(c)(9)]

5.12.2 Change from M-1 student status

Except in specific cases having to do with change to H status or F-1 status (see below), an M-1 student may apply for a change to any other nonimmigrant status for which he or she is eligible. Changes to a nonimmigrant status that requires the filing of the Form I-129 (Petition for Nonimmigrant Worker) do not require the use of the Form I-539, whereas changes to other nonimmigrant categories require the filing of the Form I-539 (Application to Extend/Change Nonimmigrant Status) and the submission of the supporting documentation described in the instruction sheet attached to that form.

An M-1 student must apply for any change of status while the student's authorized stay is valid; that is, no later than 30 days after the completion of the course of study or period of authorized practical training.

5.12.2.1 Change from M-1 to F-1

An alien in M-1 status may not change to F-1 status. [8 CFR 248.1(c)] However, if a student was erroneously issued an M-1 visa or admitted in M-1 status, a change of status may be granted, according to a previous version of the OIs. The intending F-1 student must submit to the INS office having jurisdiction over the school the student was last authorized to attend the following documents:

1. Form I-20A-B (with all student certification sections completed);
2. evidence of finances;
3. a copy of Form I-94;
4. a letter from a designated official of the school the student was last authorized to attend explaining the reason(s) the designated official believes that the student's nonimmigrant classification should be changed to that of an F-1 student.

An INS official is most likely to approve a request for change of status under these circumstances when the error in classification resulted from an incorrectly issued M-1 visa. It is unlikely that a change to F-1 status would be granted solely because the M-1 student changed his or her educational objective before enrolling in school, given the regulatory prohibition against changes in educational objective. [8 CFR 214.2(m)(12)]

A person classified M-2 may change to F-1 status if qualified.

5.12.2.2 Change from M-1 to H

Regarding change from M-1 to H status, INS will "deny an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act if the education or training which the student received while an M-1 student enables the student to meet the qualifications for temporary-worker classification under section 101(a)(15)(H) of the Act." [8 CFR 248.1(d)]

If an M-1 student possessed the necessary qualifications for the H-1, H-2, or H-3 status prior to the current course of study, then such a change of status may be granted. Application is made on Form I-129 (Petition for Nonimmigrant Worker) with accompanying documentation, required fee (see Appendix 1) and a copy of Form I-94. It is recommended that previous Forms I-20M-N and I-20 ID be included in the application to verify the validity of the applicant's M-1 status at the time of the application.

5.12.2.3 Change from M-1 to J-1

INS will deny an application for change from M to J (exchange-visitor) status if it appears that the change is desired primarily to enable the applicant's dependents to apply for permission to accept employment. An exception may be made, at the discretion of the INS district director, if the change in status will make the applicant subject to the 2-year foreign-residence requirement of section 212(e) of the Act.

5.12.2.4 Change from M-1 to M-2

A change of status from M-1 to M-2 requires a formal application on Form I-539 with fee. The request must be accompanied by a copy of the applicant's Form I-94; Forms I-20 ID (Student) copy of the principal alien and the applicant; proof of family relationship to the M-1 student; and information about passport validity. The application should be sent to the service center having jurisdiction over the student's place of temporary residence in the United States. [8 CFR 248.3(c)(9)]

5.12.3 Reentry to obtain new status

An M-1 student may sometimes obtain a new nonimmigrant status by leaving the United States and reentering with a new visa. If the student can be issued a visa for reentry in the desired status, reentry can make it possible to obtain a new nonimmigrant status when it is not possible to change to that new status in the United States.

5.13 DEPARTURE UPON TERMINATION OF STATUS

An M-1 student has 30 days to depart from the United States after completion of the course of study and authorized practical training, if any. [8 CFR 214.2(m)(5)] INS may grant an additional period of less than 30 days when needed to effect departure because of "conditions beyond an alien's control or other special circumstances." [8 CFR 214.1(c)(5)] An M-1 student seeking this extra 30 days must present his or her Form I-94, Form I-20 ID, passport, and an informal request to the INS office having jurisdiction over the student's place of temporary residence in the United States. If approved, the new date is called a "satisfactory departure date." The procedure is not considered an extension of stay.

5.13.1 Sailing Permit (Certificate of Compliance)

An M-1 student who has earned taxable income is no longer required to file for a certificate of compliance with U.S. income tax laws before departing the United States. The regulations are effective 28 January 1991. [*Federal Register*, 3 March 1994, p. 10066]

5.13.2 Surrender of documents

An M-1 student departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the

United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border. An M-1 student should not surrender the Form I-20 ID upon departure. It is to be retained for any subsequent entry to the United States as an F-1 or M-1 student.

5.13.3 Institutional reporting responsibilities

Institutional reporting responsibilities regarding an M-1 student who terminates attendance at a school are discussed in Section 3.5.3.

5.14 SPOUSE/DEPENDENT (M-2) STATUS

5.14.1 Eligibility

The spouse and unmarried minor children of an M-1 student may accompany the student to the United States or follow to join the student at a later date. They will be accorded M-2 status provided they establish to the satisfaction of the consular officer and an immigration officer at the port of entry that (1) they have sufficient funds to cover their expenses, or other arrangements have been made to provide for their expenses; and (2) they intend in good faith and will be able to depart from the United States "upon the termination of the status of the principal alien." [22 CFR 41.61(b)(3)]

5.14.2 Entry documentation for M-2 dependents

If the dependent spouse and unmarried minor children accompany the student to the United States, the Form I-20M-N that the student submits to the consular officer with the application for an M-1 visa (see Sections 5.3 and 5.4) may be used to request M-2 visas and entry in M-2 status for the spouse and unmarried minor children. If the dependents follow to join the student, they will need to submit to the consular official either page 4 of Form I-20M-N (Student) Copy with a current endorsement or a new Form I-20M-N completed for use by spouse and/or children in acquiring M-2 classification. If a new Form I-20M-N is issued, it is not required to state the names of the dependents on the face of the form, but it is considered good practice to state them in the "Remarks" section.

5.14.3 Obtaining a visa and entering the United States

5.14.3.1 Aliens subject to passport and visa requirements

An M-1 student's spouse and unmarried minor children who are required to have valid passports and visas for entry to the United States (see Sections 2.2.4 and 2.3.2) must apply for M-2 visas at a U.S. consulate or embassy abroad. The applicant must present the consular officer with either a page 4 of Form I-20M-N (Student) Copy validated within 6 months or a new Form I-20M-N completed in the name of the M-1 principal, and such other documents as may be required to demonstrate eligibility for M-2 status (see Section 2.3).

If the visa application is approved, the form will be returned to the applicant for use in applying for admission to the United States. When the dependent arrives at the port of entry, he or she presents the passport and the form to the immigration inspector. Upon admitting the alien to the United States, the inspector issues the alien a Form I-94, showing the date and place of entry, classification, and authorized period of stay. The period will coincide with that of the M-1 principal.

5.14.3.2 Aliens not subject to passport and visa requirements

The M-1 student's spouse and unmarried minor children who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) and who wish to enter the United States in M-2 status may apply directly to an immigration inspector at a port of entry. The procedure is otherwise the same as that followed by aliens required to meet passport and visa requirements.

5.14.4 Employment

Individuals holding M-2 status may not accept employment or engage in business under any circumstances. Employment, in this context, is defined as the rendering of services, part time or full time, for financial or other compensation, including self-employment.

5.14.5 Extension of stay

Application for extension of stay for an M-2 spouse and minor children is included in the M-1 student's application for extension of stay. Information about the M-2 dependents' names, dates of birth, and passport expiration dates is entered on the Form I-539 (see Section 5.8), which is submitted to INS along with the Form I-20 ID of the M-1 principal and copies of the Forms I-94 of all M-2 dependents. The periods of stay for principal and dependents will be extended to the same date.

Occasionally, when an M-2 dependent arrives in the United States at a date later than the M-1 student, the M-2 dependent's Form I-94 will reflect an earlier or a later date of expiration of stay than does the Form I-20 ID Copy of the M-1 student. When the M-2 dependent's period of stay ends before that of the M-1 principal, the Form I-20 ID of the M-1 student and Form I-94 of the M-2 dependent can be sent to INS along with information concerning the validity of the dependent's passport and a letter requesting that the M-2 dependent's period of stay be extended to coincide with that of the M-1 student. When the M-2 dependent's period of stay ends later than that of the M-1 principal, the M-2 dependent applies for an extension of stay along with the M-1 student, as described in the preceding paragraph.

5.14.6 Visits abroad and reentry

An M-2 dependent leaving the United States temporarily must be certain to have the documents necessary to enter the country visited and to reenter the United States (see Section 5.11). As in the case of the M-1 principal, the M-2 dependent needs a valid passport and visa (unless exempt from passport and visa requirements—see Sections 2.2.4 and 2.3.2) and either a currently endorsed Form I-20M-N (Student) Copy or a new Form I-20M-N (each in the name of the M-1 student). M-2 dependents are eligible for automatic extension of validity of visas on the same basis as M-1 students (see Section 5.11.3).

A special situation arises when the principal M-1 student travels outside the United States, leaving the M-2 dependent in the United States. Since the dependent's stay in this country is valid only while the M-1 student maintains status here, it is not legitimate for the dependent to remain in the United States while the M-1 student is absent from the country for any significant period of time.

5.14.7 Change of status

5.14.7.1 Change to M-2 status

A nonimmigrant alien may apply for a change to M-2 status if the spouse changes from another nonimmigrant classification to M-1, or if the alien becomes the spouse of an alien in M-1 status. For both situations, the applicant must provide verification that he or she has sufficient financial support for the contemplated stay in the United States.

In those instances when the dependent's spouse is changing to M-1 status, application for the change to M-2 status is included in the principal's application, and a copy of the dependent's Form I-94 is submitted along with a copy of the principal alien's. In the case of marriage to an M-1 student, the nonimmigrant spouse (and children, if applicable) may apply for a change to M-2 status by submitting to INS copies of Forms I-94 of the applicant(s), the Form I-20 ID of the principal M-1 student, evidence of family relationship (e.g., a marriage certificate), a completed Form I-539 (Application to Extend Status/Change Nonimmigrant Status), and the required fee (see Appendix 1).

A change of status from M-1 to M-2 requires a formal application on Form I-539 with fee. The request must be accompanied by a copy of the applicant's Form I-94; Forms I-20 ID (Student) copy of the principal alien and the applicant; proof of family relationship to the M-1 student; and information about passport validity. The application should be sent to the service center having jurisdiction over the student's place of temporary residence in the United States. [8 CFR 248.3(c)(9)]

5.14.7.2 Change from M-2 status

A nonimmigrant in M-2 status is eligible for a change to another nonimmigrant classification if the alien can meet all the requirements for the desired classification. The applicant must complete Form I-539 (Application to Extend Status/Change Nonimmigrant Status) and submit it to INS along with a copy of his or her Form I-94, the required fee (see Appendix 1), and the other materials specified on the instruction sheet attached to the Form I-539. Although not stated in the regulations, application on Form I-539 with fee is required for change from M-2 to M-1 status.

5.14.8 Departure or termination of status

A nonimmigrant holding M-2 status must terminate that status and depart from the United States "upon the termination of the status of the principal alien." [22 CFR 41.61(b)(3)] The M-2 nonimmigrant will surrender his or her Form I-94 at the time of departure.

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SECTION 6

O Status: Persons of Extraordinary Ability

Jerry Wilcox (Updated by Amy Yenkin)

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I-539	Application to Extend Status/Change Nonimmigrant Status
I-797	Notice of Action
I-94	Arrival/Departure Record
I-9	Employment Eligibility Verification

6.1 GENERAL INFORMATION AND DEFINITIONS

The O visa was created by Congress in the Immigration Act of 1990 [Act 101(a)(15)(O)] and amended by the Miscellaneous and Technical Immigration Amendments of 1991 (MTINA) [PL 102-232]. Within the O visa, three categories were created. The O-1 includes aliens of extraordinary ability in the sciences, education, business, and athletics, aliens of extraordinary ability in the arts, and aliens of extraordinary achievement in the motion picture and television industries. The O-2 applies only to an accompanying alien who assists in the artistic or athletic performance of an O-1. The O-3 is for the accompanying spouse and dependents of O-1 aliens. [8 CFR 214.2(o)(1)]

Artists and athletes may also enter the United States temporarily in the P classification (see Section 7, P Status: Artists, Athletes, and Entertainers).

The focus of this section is on individuals with extraordinary ability in the sciences, education, business, and athletics since it is more probable that individuals in these occupations would be the beneficiaries of college or university petitions.

Extraordinary ability must have been demonstrated through sustained national or international acclaim. [Act 101 (a)(15)(O)] The regulations define extraordinary ability in the field of science, education, business, or athletics as a "level of expertise indicating that the person is one of the small percentage who have arisen [sic.] to the very top of the field of endeavor." [8 CFR 214.2(o)(3)(ii)] The O category applies to individuals, not groups.

A successful petition for O status must establish the fact that the applicant has demonstrated extraordinary ability and must include a written consultation from a peer group in the area of the alien's expertise. "Peer group means a group or organization which is comprised of practitioners in the alien's occupation. If there is a collective bargaining representative of the employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation." [8 CFR 214.2(o)(3)(ii)]

O visas are valid for up to 3 years, with 1-year incremental extensions allowed to continue the same work. The total time allowed to stay in the United States is the duration of the "event" for which the visa is granted. Thus there is no absolute limit on the time an O-1 can stay in the United States. "Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity could include short vacations, promotional appearances, and stopovers incidental and/or related to the event. A group of related activities may also be considered an event. [8 CFR 214.2(o)(3)(ii)]

The O visa category requires considerable documentation and appears to be best reserved for the most highly qualified guest professors, researchers, and artists.

6.2 PETITION PROCESS FOR O-1 ALIENS OF EXTRAORDINARY ABILITY IN THE SCIENCES, EDUCATION, BUSINESS, OR ATHLETICS

To obtain an O nonimmigrant worker, a qualified employer files a petition on Form I-129 (Petition for a Nonimmigrant Worker), sending it, the O-classification supplement form, accompanying documentation, and the applicable fee to the INS service center having jurisdiction over the place where the alien of extraordinary ability will work. The application may not be filed more than 6 months before the need for the alien's services. [8 CFR 214.2(o)(2)(i)] INS determines if the alien proposed to enter the United States to participate in the event is qualified. The application must be accompanied by (1) evidence that the alien has received a major, internationally recognized award or at least three qualifications from a list of examples; (2) a copy of any written contract between the employer and the alien or a summary of the oral agreement under which the alien will be employed (or if there is no contract, a summary of the terms under which the alien will be employed); (3) an explanation of the nature of the event or activity, the beginning and ending dates for the event or activity, and a copy of the itinerary (if applicable) for the event or activity; and (4) a written consultation from a peer group in the alien's area of ability. [8 CFR 214.2(o)(2)(iv)] The employer is responsible for reasonable costs of return transportation to the last place of residence prior to the alien's entry to the United States if the employment is terminated early for reasons other than voluntary resignation. [8 CFR 214.2(o)(16)] The application process is outlined below.

6.2.1 Evidentiary criteria for O-1 aliens of extraordinary ability in the sciences, education, business, or athletics

The petitioner can prove that the alien has demonstrated extraordinary ability in science, education, business, or athletics through sustained national or international acclaim either by submitting evidence that the alien has received a major, internationally recognized award such as the Nobel Prize [8 CFR 214.2(o)(3)(iii)(A)] or by submitting documentation of at least three of the following:

1. a nationally or internationally recognized award or prize for excellence in their field
2. membership in associations in the field for which the classification is sought, which require for membership outstanding achievement, as judged by national or international experts in their disciplines or fields
3. published material in professional or major trade publications or other media about the alien and related to the alien's work in the field for which the classifica-

tion is sought. This should include the title, date, and author of the published material and any translation if necessary.

4. evidence of the alien's participation on a panel or individually as a judge of the work of others in the same or an allied field of specialization for which the classification is sought (e.g., judging Nobel Prizes)

5. evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field

6. evidence of the alien's authorship of scholarly articles in the field in professional journals or the major media (e.g., publication in Lancet, if the alien is an M.D.)

7. evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

8. evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field, as proven by contracts or other evidence. [8 CFR 214.2(o)(3)(iii)(B)]

If the above list does not easily apply to the alien's occupation, other comparable evidence may be submitted by the petitioner to establish the alien's extraordinary ability. [8 CFR 214.2(o)(3)(iii)(C)]

6.2.2 Consultation requirements and advisory opinions

The petition for an O-1 alien of extraordinary ability must include written evidence of consultation with an appropriate peer group in the area of the alien's responsibility regarding the nature of the work to be done by the alien and his or her qualifications. This must be accomplished by submitting the written advisory opinion from the appropriate peer group (which could include a person or persons with expertise in the field), labor organization, and/or management organization with the petition at the time the petition is filed with the service center. [8 CFR 214.2(o)(5)(i)]

The written consultation from a peer group that accompanies the petition must describe the alien's ability and achievements in the field, specify the duties to be performed, and state whether the position requires the services of someone of extraordinary ability. "A consulting organization may also submit a letter of no objection in lieu of the above if it has no objection to the approval of the petition." [8 CFR 214.2(o)(5)(ii)]

The Service will list peer groups, labor organizations, and/or management organizations which have agreed to provide advisory opinions to the Service and/or petitioners and publish these in Operation Instructions, usually available in law libraries or INS offices. The Service will also list in Operation Instructions those occupations or fields where the nonexistence of an appropriate consulting body has been verified. Additional organizations or groups may provide advisory opinions, since the Service admits its list is not exhaustive. [8 CFR 214.2(o)(5)(v)]

If a peer group exists and is willing to provide a written advisory opinion, such an opinion should be submitted with the petition. In cases where it is established by the petitioner that an appropriate peer group does not exist, INS will render a decision on the evidence of record. [8 CFR 214.2(o)(5)(i)(G)] For academic positions, if no appropriate peer group exists, the petitioner may include letters of attestation from qualified experts in support of the claim of extraordinary ability.

6.2.3 Documentary requirements

The petition must include the following four documentary elements:

1. evidence that the alien has received a major, internationally recognized award or at least three qualifications from a list of examples

2. a copy of a written contract between the employer and the alien or a summary of the oral agreement under which the alien will be employed (or if there is no contract, a summary of the terms under which the alien will be employed)

3. an explanation of the nature of the event or activity, the beginning and ending dates for the event or activity, and a copy of the itinerary (if applicable) for the event or activity

4. a written consultation from a peer group in the alien's area of ability. [8 CFR 214.2(o)(2)(ii)]

Documentary evidence must be in the form of (1) affidavits, contracts, awards, or similar documentation reflecting the nature of the alien's achievement executed by an officer or responsible person employed where the work was performed and (2) affidavits written by present and former employers or recognized experts certifying to the recognition and extraordinary ability of the alien. [8 CFR 214.2(o)(2)(iii)]

6.2.4 Filing of the petition

The petition—including Form I-129, the O-classification supplement, other required documentary evidence, and fee—should be submitted to the INS service center having jurisdiction over the place where the alien will work. Legible photocopies of documents may be submitted in support of the petition. Original documents may be requested by INS. The application may not be filed more than 6 months before the work is to begin. [8 CFR 214.2(o)(2)]

6.2.5 Services in more than one location

A petition that requires the alien to work in more than one location must include an itinerary with the dates and locations of the work. The petition is filed with the INS service center that has jurisdiction over the area where the petitioner is located. [8 CFR 214.2(o)(2)(iv)(A)]

6.2.6 Services for more than one employer

If an alien will work for more than one employer concurrently, each employer, or the agent of the alien, must file a separate application with the INS service center having jurisdiction over the area where the work will take place. [8 CFR 214.2(o)(2)(iv)(B)]

6.2.7 Approval and validity of petition

The employer is notified of the approval of the petition on Form I-797, Notice of Action. This notice includes the alien's name and the period of validity of the petition. [8 CFR 214.2(o)(6)(i)]

An approved new petition for the O-1 alien will be valid for a time period not to exceed 3 years. [8 CFR 214.2(o)(6)(iii)(A)] Note the following three instances that determine the starting and ending dates of the petition:

1. If the new O petition is approved before the date on which the petitioner says the services will begin, the approval notice will show the actual dates requested by the petitioner.
2. If the new O petition is approved after the date the petitioner indicated the services were to begin, the beginning date will be the date of approval and the ending date will be that requested by the petitioner.
3. If the length of time requested by the employer exceeds 3 years, the petition shall only be approved up to the 3-year limit. [8 CFR 214.2(o)(6)(ii)]

6.2.8 Denial of petition

If the application is to be denied based on information of which the petitioner is unaware, the INS service center will notify the petitioner of the intent to deny and the basis for denial. The employer may review and rebut the evidence within 30 days of the notice of intent to deny the application. [8 CFR 214.2(o)(7)(i)] The petitioner is notified of the reasons for denial and of the right to appeal. [8 CFR 214.2(o)(7)(ii)]

6.2.9 Effect of approved permanent labor certification or filing of immigrant visa petition

The fact that an O-1 petitioner may hold an approved labor certification or may have filed a preference petition shall not be a basis for denying a petition, a request for extension of stay, entry to the United States, or change of status to that of O. An O nonimmigrant may leave and reenter the United States while seeking to become a permanent resident. [8 CFR 214.2(o)(13)]

6.3 EXTENSION OF STAY

An employer may file for an extension of stay for an alien of extraordinary ability to complete the activity described in the original petition. Supporting documents are not required unless requested by the INS service center. The application must be filed on Form I-129 and the O-classification supplement before the expiration of the original petition.

Accompanying the Form I-129 must be a statement explaining the reasons for the extension, a request to extend the petition, and the dates of the requested extension. The alien for whom the extension is requested must be physically present in the United States at the time the extension of stay is filed. If the alien must leave the United States while the extension request is being considered, the INS service center may cable approval of the extension to a consular office abroad where the alien will apply for the visa. [8 CFR 214.2(o)(12)(i)]

The maximum extension that can be requested at any one time is 1 year, solely for the purpose of permitting the alien to continue or complete the activity described in the original petition. Ten days is added to the extension date requested by the petitioner. [8 CFR 214.2(o)(12)(ii)] There is no absolute time limit on the O-1's total stay in the United States.

6.4 CHANGE OF EMPLOYERS

If an O-1 alien seeks to change employers in the United States, the new employer must file a petition with the INS service center having jurisdiction over the place of employment and may not begin work until it is approved. [8 CFR 214.2(o)(2)(iv)(C)]

6.5 OBTAINING A VISA AND ENTERING THE UNITED STATES

To obtain an O visa and enter the United States for the purpose of engaging in employment on the basis of an approved petition to work as an alien of extraordinary ability, the foreign national should report to the consulate indicated in the original application the prospective employer filed with the INS service center. The applicant must apply at the U.S. consulate named on Department of State Form OF-156, presenting a valid passport and Form I-797 (Notice of Action) indicating approval of the O petition.

Although an applicant may meet the requirements to work as an alien of extraordinary ability and appear eligible for an O visa, it is the U.S. consular officer who will decide whether the applicant will be granted the visa (see Sections 2.3.2 and 2.3.3). It is important to note, however, that the concept of dual intent applies to O-1 aliens, who may enter the United States, extend their stay, or change to another nonimmigrant status for which they are eligible even if they have indicated their intent to become immigrants to the United States. [8 CFR 214.2(o)(13)] The concept of dual intent will likely benefit some foreign nationals who may qualify to work at U.S. colleges and universities, yet who need to maintain an active international travel schedule while in O-1 status.

6.5.1 Aliens subject to passport and visa requirements

An alien required to have a valid passport and visa for entry to the United States (see Sections 2.3.2 and 2.3.3) applies for an O visa at a U.S. consulate or embassy. In Taiwan, application is made at the American Institute in Taiwan. The applicant presents a valid passport and Form I-797, the Notice of Action authorizing employment as an alien of extraordinary ability.

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3). The Form I-797 is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents the passport (which must be valid for at least 6 months beyond the initial contemplated period of stay), visa, and Form I-797 to the immigration official.

Upon admitting the alien of extraordinary ability to the United States, the immigration officer issues a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as an O alien of extraordinary ability, and the expiration date of that status. [8 CFR 214.2(o)(11)]

The Form I-94 is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada or Mexico. When an alien in O status has surrendered Form I-94 upon departure and subsequently reenters the United States, he or she is issued a new Form I-94.

6.5.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.2.4). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as an alien of extraordinary ability. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

6.6 AUTHORIZED STAY

An alien of extraordinary ability will be admitted to the United States for the period of the approved petition as noted on the Form I-797, not to exceed 3 years for new petitions, plus an additional 10 days. Employment is not permitted during these 10 days.[8 CFR 214.2 (o)(7)(iii) and (10)] Extensions of stay are possible in 1-year increments (see Section 6.3).

6.7 MAINTENANCE OF STATUS

An alien admitted in O status is only authorized to work with a specific employer as approved by INS. Any employment not authorized in direct connection with the approved petition is in violation of O status.

6.8 EMPLOYMENT

An alien of extraordinary ability is authorized to work only for the specific employer approved by INS in the original petition. No other employment is authorized. Because the employment is specific to a particular employer, no Employment Authorization Document is required; however, an employer is obligated to complete Form I-9, Employment Eligibility Verification (see Section 14.10). Note that employment with the petitioner is limited to the dates on Form I-797, Notice of Action.

6.9 TAX OBLIGATIONS

6.9.1 Social Security

Contributions for Social Security are to be withheld by employers. Unlike other visa classes, O visa holders are not exempt from Social Security tax under any circumstances.

6.9.2 Income tax

O-1 nonimmigrants are generally subject to federal and state income tax. Information on an O-1 alien's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens".

6.10 VISITS ABROAD AND REENTRY

Whenever an alien in O-1 status wishes to leave the United States temporarily and return to continue his or her approved employment, he or she must carry appropriate documentation to permit entry to another country and reentry to the United States. The reentry documentation will generally include Form 1-797 and a valid passport and visa (unless the alien is not subject to the passport and visa requirements).

6.11 AUTOMATIC EXTENSION OF VALIDITY OF VISAS

An expired O visa may be considered to be automatically reissued to the date of application for readmission to the United States (and therefore the visa in the passport need not have a current expiration date) provided the O-1 alien of extraordinary ability

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory (Canada or Mexico);
2. has maintained and intends to resume his or her status as an O-1 alien and is reentering the United States prior to the expiration of the previously authorized stay;
3. presents a Form I-797 that contains the dates of the previously authorized stay;
4. is in possession of a valid passport; and
5. presents an unexpired Form I-94.

Furthermore, a person who entered the United States in a classification other than O, but whose status was subsequently changed to O, may be considered to have the previous visa automatically reissued and converted to an O visa if he or she meets the conditions stated above. [22 CFR 41.112(d)]

6.12 CHANGE OF STATUS

6.12.1 Change to O status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J may apply for a change to O status if the alien has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-129, Petition for Nonimmigrant Worker (see Section 6.2).

6.12.2 Change to another nonimmigrant status

An O alien may apply to change to another nonimmigrant status for which he or she is eligible by completing Form I-539 or Form I-129 and the supporting documentation described in the instruction sheets attached to each form.

6.12.3 Reentry to obtain new status

An O-1 alien may obtain a new nonimmigrant status by leaving the United States, obtaining a new visa at a U.S. consular post abroad, and reentering with a new visa and supporting documentation.

6.13 DEPARTURE UPON TERMINATION OF STATUS

An alien of extraordinary ability has 10 days to depart the United States after completion of the authorized program. [8 CFR 214.2 (o)(10)]

6.14 SURRENDER OF DOCUMENTS

An O-1 alien departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border.

6.15 SPOUSE/DEPENDENT (O-3) STATUS

The spouse and dependents (unmarried minor children) of O-1 aliens are given O-3 classification. They are subject to the same limitations of stay as the O-1 alien. No employment is permitted to spouse or dependents in O-3 status. [8 CFR 214.2(o)(6)(iv)]

6.16 DIFFERENCES FROM J, P, AND H STATUS

6.16.1 Differences from J status

The commonly used exchange-visitor category of research scholar/specialist is quite likely to be applied to aliens who might qualify for O-1 status. In fact, unless the length of time required to complete the employment were significantly longer than 3 to 5 years, exchange-visitor status would be preferable because of its simplicity. Its only drawback, if the alien were from a country with which the United States had a critical-skills agreement, would be the 2-year home country residence requirement. (Payment of the alien's salary from a U.S. source might subject the alien to the same requirement.) In addition, the J visa may not be used for tenure track positions, while the O visa has no restrictions as to the permanence of the position.

6.16.2 Differences from P status

The P visa (see Section 7) was created by the 1990 Act. The P visa category has three subsets: P-1 status is intended for "internationally recognized" artists and athletes; P-2 is reserved for artists and entertainers who are part of a "reciprocal exchange" program between organizations in the United States and organizations abroad; and the P-3 category is reserved for artists and entertainers who perform as part of a "culturally unique" program.

Some overlap is evident, as artists and athletes are mentioned in both the O and P visa legislation. The advantages and disadvantages of the P and O categories are unclear. However, some of the main differences are:

Athletes. O-1 athletes are individuals of sustained national or international acclaim. P-1 athletes must be internationally recognized but need only demonstrate such recognition one time. The initial O-1 petition may be for up to 3 years with extensions in 1-year increments. The initial P-1 petition is for 5 years with extensions up to a total stay of 10 years.

Artists and entertainers. O-1 artists are admitted as individuals. P-1 artists are admitted as a group, although a member of a P-1 group may petition for an O-1 based on his or her own merits. Furthermore, INS can waive the consultation requirement if the O-1 artist is seeking readmission to perform similar services within 2 years of the date of a previous consultation.

6.16.3 Differences from H-1B status

One important advantage of the O-1 over the H-1B visa is its lack of time limit. In addition, the new regulations for the H-1B stipulate that the employer must meet certain wage and working condition requirements. These requirements are absent from the O-1 provisions. The O visa, however, carries a higher standard in order for an alien to qualify.

SECTION 7

P Status: Artists, Athletes, and Entertainers

Lorig S. Boyajian

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Forms and Documents Discussed in This Section

I-129	Petition for Nonimmigrant Worker
I-797	Notice of Action

7.1 DEFINITION OF P STATUS

The P visa classification was created by Congress in the Immigration Act of 1990 (PL 101-649) and further refined in the 1991 technical amendments to the Act. [Act 101(a)(15)(P)] The P classifications are used for the temporary services of an alien as an athlete, as a part of an athletic team, as an artist, or as part of a performance group. Generally, the alien must be internationally recognized or acclaimed. The regulations define international recognition as having a "high level of achievement in a field as evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." [8 CFR 214.2(p)(3)] The Act describes four P classifications:

1. The P-1 alien is one who is coming to the United States to perform services as an internationally recognized athlete, or as part of such an athletic team, or as a member of an internationally recognized entertainment group (not as an individual performing artist).
2. The P-2 alien is one who is coming to perform services as an artist or entertainer under a reciprocal exchange program.
3. The P-3 alien is one who is coming solely to perform, teach, or coach under a program that is culturally unique.
4. The P-4 alien is the spouse or minor child of a P alien, if he or she accompanies or follows to join a P-1, P-2, or P-3 alien. [Act 101(a)(15)(P); 8 CFR 214.2(p)]

Additionally, those individuals who are not artists, performers, or athletes but are considered essential support personnel (in that they are integral to the performance of a P-1, P-2, or P-3 alien and their services cannot be readily performed by a U.S. worker), are classifiable as P aliens in the same visa category as the principal alien(s). [8 CFR 214.2(p)(3)]

P nonimmigrants must possess an unrelinquished residence abroad that they have no intent of abandoning.

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7.2 FILING A P PETITION

A petition for any P classification is filed on Form I-129 by the employer or sponsor, such as an agent, who requires the services of an alien on a temporary basis. Only a P-1 petition can be filed by a foreign employer. The petition must be submitted in duplicate, along with supporting documents specified for each P classification, to the INS service center having jurisdiction over the place in which the alien is to be employed. If the petition requires the alien to work in more than one location, the petition is filed with the service center having jurisdiction over the area where the petitioner is located or the place of the first engagement. INS will notify the petitioner on Form I-797 (Notice of Action) upon approval of a petition.

Sometimes the employer is the petitioner, and it is expected that the alien will receive a salary or other compensation from the petitioner and not from any other employer in the United States. If the alien is to be employed by more than one employer, each employer must submit a separate petition. Sometimes an agent is the petitioner and is performing the function of an employer. In this case, the agent must provide an itinerary of definite employment and specify the wage offered and other terms and conditions of employment.

7.3 P-1 STATUS

P-1 status is reserved for (1) an athlete who is internationally recognized on his or her own reputation and achievements as an individual—such as a tennis star, gymnast, or star soccer player—and will be performing services in the United States at an event that requires an internationally recognized athlete, such as a distinguished athletic competition; (2) an athletic team which is to perform at a specific athletic competition at an internationally recognized level of performance; (3) members of an entertainment group that is internationally recognized as outstanding for a substantial and sustained period of time and who have had a sustained relationship with the group, usually for at least 1 year, and are integral to the group's functioning. The 1-year requirement may be waived in rare instances, such as for circus personnel, or illness. Further, certain nationally recognized groups may be able to obtain a waiver of the international-recognition requirement in consideration of "special circumstances," such as limited access to news media. Please see 8 CFR 214.2(p)(4) for documentary requirements to establish international recognition for a P-1 alien athlete, athletic team, or performance group.

P-1 petitions for athletes are valid for a period of up to 5 years; for athletic teams and entertainment groups petitions shall be valid for the period of time to complete the competition, performance, or event, not to exceed 1 year.

An advisory opinion by a labor organization that has expertise in the area of the alien's sport or entertainment field is required in a P-1 petition. The opinion must evaluate or describe the alien's or group's ability and achievement, comment on whether the alien or group is internationally recognized, and state whether the services to be performed are appropriate for an internationally recognized athlete or entertainment group.

An academic institution will seldom, if ever, have a need to file a P-1 petition on behalf of an alien or group of aliens. Should a foreign entertainment group of high caliber perform on campus and be paid by the institution, it is probable that an agent will be the petitioner and that the institution's name and address will be attached to the group's itinerary supporting the I-129 petition for P status.

7.4 P-2 STATUS

This classification is accorded to artists and entertainers, individually or as a group, who will be performing under a reciprocal-exchange program between an organization in the United States and another organization abroad. The agreement must provide for the temporary exchange of artists and entertainers, and the exchange must display parity in the caliber of aliens, the terms of employment, and the numbers of artists and entertainers involved. Among other things, an advisory opinion must be attached to the petition by an appropriate labor organization in the United States that was involved in negotiating, or has concurred with, the reciprocal exchange.

P-2 petitions are valid for a period necessary to complete the event, activity, or performance, not to exceed 1 year.

7.5 P-3 STATUS

Artists or entertainers recognized individually or as a group by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in a particular field for their excellence in developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, culinary, cultural, musical, theatrical, or artistic performance or presentation are eligible for P-3 status, as long as they are coming to the United States for cultural events to further the understanding or development of their art form. They may be sponsored by any organization requesting such activities. The performance itself may be commercial.

A petition to classify an alien or a group as a P-3 alien must be accompanied by evidence of the cultural uniqueness of the program, as well as evidence that all performances are culturally unique. [8 CFR 214.2(p)(6)(G)(iii)]

7.6 CONSULTATION WITH A LABOR ORGANIZATION

Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for a P-1 or P-3 classification can be approved. All aliens, including essential support personnel, who are part of the petition must be included in a written advisory opinion. A consultation is also mandatory for P-2 essential support personnel. (See Section 7.4 for P-2 principals.) In those cases where the employer can show that there is not an appropriate labor organization, the petition can be approved without it. If the petitioner does not provide a consultation, the Service will forward a copy of the petition to the labor organization and await a reply, thus delaying adjudication of the petition and perhaps entailing a negative opinion. Clearly it is to a petitioner's advantage to obtain the advisory opinion prior to filing a P petition. Although the advisory opinion is just that—advisory—it is too early to say whether the Service will render a decision on the basis of the opinion alone. If the petition is to be denied based on information of which the petitioner is unaware, the Service will give the petitioner 30 days to rebut the evidence it is using to make its decision. The Service will then render a decision on the basis of the additional evidence presented.

7.7 MAINTENANCE OF STATUS

A temporary worker in P-1, P-2, or P-3 status may be employed only by and according to the conditions of the petitioner through whom status was obtained. P-4 aliens may not be employed.

A beneficiary of a P visa may be admitted to the United States 10 days before the validity of the visa begins and up to 10 days after the validity period ends. An extension or change of status, however, must be filed only if the validity of the petition has not expired. [8 CFR 214.2(p)(12) and (13)]

7.8 EXTENSION OF STAY

A P-1 individual athlete may be initially admitted for the length of the event, not to exceed 5 years. Extensions of stay may be authorized for a period of up to 5 more years, not to exceed a total stay of 10 years. Other P aliens may be admitted for a period equal to the length of the event or performance, not to exceed 1 year. Extension of status may be granted for up to 1 year at a time to continue to complete the activity for which they were admitted. [8 CFR 214.2(p)(8)(iii) and (14)(ii)]

7.9 P AND O STATUS COMPARED

The P visa is used for athletes and performers who are coming to the United States to participate in a specific athletic event or performance. Although the athletic performance or event can be an entire season or group of related activities, the P visa is not intended to be used for employment other than for this one purpose. O visa holders are authorized to perform services in almost any activity requiring their distinguished talent.

With regard to entertainers, P visa holders are members of a performance group and are coming to the United States as a group. O visa holders are individual performers coming to the United States by virtue of their individual recognition.

The P visa was designed to allow a wider variety of performers into the United States than the O. Unfortunately, the interim regulations implementing the Act have failed to accommodate this intent. It is anticipated that the final regulations implementing the Act will further refine the differences between these visa classifications.

7.10 P-3 AND Q STATUS COMPARED

The Q visa is for corporations and businesses that require the temporary services of an individual who will be sharing his or her culture with the American public. There is a low burden of qualification for an alien to be eligible for such classification. On the other hand, P-3 status is reserved for individuals or groups that have been recognized for their cultural uniqueness and are coming to the United States for cultural events to further the development of their art form.

The Q visa is valid for 15 months and the P-3 is valid for the length of the activity, initially not to exceed 1 year. The P-3 may be extended in increments of 1 year to continue or complete the activity for which admission was granted.

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SECTION 8

Q Status: International Cultural Exchange Visitors

Jerry Wilcox

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Forms and Documents Discussed in This Section

I-129	Petition for Nonimmigrant Worker
I-539	Application to Extend Status/Change Nonimmigrant Status
I-797	Notice of Action
I-94	Arrival/Departure Record
OF-156	Nonimmigrant Visa Application
I-9	Employment Eligibility Verification Form

8.1 GENERAL INFORMATION AND DEFINITIONS

The Q visa category was created by Congress in the Immigration Act of 1990. [Act 101(a)(15)(Q)] The program allows a qualified employer to petition the Immigration and Naturalization Service (INS) for approval to bring in an alien for a period not to exceed 15 months to engage in prearranged employment or training and to share his or her own culture with Americans. The purpose of the international cultural exchange programs for which the Q visa was designed is to enhance the American people's knowledge and appreciation of different world cultures. [8 CFR 214 Interim Rule, *Federal Register*, 22 August 1991, p. 41623] An international cultural exchange program involving Q-visa holders must involve structured public activities with specific culture-sharing goals; the employment aspect of the program must be ancillary to the cultural objectives.

The most common example of an employer mentioned in the discussions of this status is Disney World's Epcot Center in Florida. Examples of qualified nonimmigrant employees often mentioned are Chinese acrobats and members of Bavarian Oktoberfest bands. Discussions with an official at INS headquarters confirmed that a language instructor who included cultural training in the classroom would be another appropriate example.

"International cultural exchange visitor" or "participant" means an alien having a residence in a foreign country that he or she has no intention of abandoning, who is coming temporarily to the United States to take part in an international cultural exchange program approved by the attorney general. [8 CFR 214.2(q)(1)]

"Qualified employer" means a U.S. or foreign firm, corporation, or other legal business that administers an international cultural exchange program designated by the attorney general. [8 CFR 214.2(q)(1)]

"Petitioner" means the employer or its designated agent (one employed by the qualified employer on a permanent basis in an executive or managerial capacity for the preceding 12 months). [8 CFR 214.2(q)(1)]

8.2 PETITION PROCESS

The Q application process is similar to the H-1B temporary-worker application process. It has two parts. INS will determine during the application process if the intending employer is qualified to administer an international cultural exchange program. If that determination is positive, INS will decide whether the alien or aliens proposed to enter the United States to participate in the international cultural exchange program are qualified. The application process is outlined below.

The qualified employer files a petition on Form I-129, Petition for a Nonimmigrant Worker—plus a supplement to the Form I-129 for the Q classification and the applicable fee. Form I-129 is filed with the INS service center that has jurisdiction over the place where the international cultural exchange visitor will perform the service or labor or receive training or at the service center having jurisdiction over the petitioner's headquarters. Employers should be consistent about where they file petitions. The employer petitions concurrently (on the Form I-129 and Q supplement) for approval of the international cultural exchange program and the international cultural exchange visitor(s). The petition for Q nonimmigrant workers is considered only if the employer's concurrent petition for the international cultural exchange program is approved. [8 CFR 214(q)(3)(i)]

A U.S. or foreign employer may file the petition, but a foreign employer's petition must be signed by a U.S. citizen or permanent resident who has been employed by the qualified foreign employer on a permanent basis in an executive, managerial, or supervisory capacity for the prior year.

8.2.1 Program length

Each petition for an international cultural exchange program may be approved for the duration of the program, which may not exceed 15 months. A new petition must be filed each time the qualified employer wants to bring in additional international cultural exchange visitors. A qualified employer may replace a participant named on an approved petition so long as the replacement meets the requirements for the program. [8 CFR 214.2(q)(3)(ii)]

8.2.2 Location of program activity

The culture-sharing activity must take place in a school, museum, business, or other establishment where the public is exposed to aspects of a foreign culture as part of a structured program. (Also see Section 8.2.9 on service, labor, or training in more than one location.) Note that a private home is not listed as an appropriate primary location of program activity. [8 CFR 214.2(q)(3)(iii)(A)]

8.2.3 Cultural component

The international cultural exchange program must have a cultural component that is essential and integral to the alien's employment or training. The program must exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the alien's home country. Acceptable cultural components of the program are structured instructional activities such as courses or lecture series that improve Americans' knowledge of the visitor's home country's arts, literature, history, language, or traditions. [8 CFR 214.2(q)(3)(iii)(B)]

To this end, the petitioner must demonstrate that the cultural component of the program is an essential and integral part of the service performed or training received. Proper documentation such as catalogs, brochures, or other types of material must be submitted to demonstrate that:

1. the cultural component is designed to give an overview of the attitudes, customs, history, heritage, philosophy, tradition, or other cultural attributes of the participant's home country
2. the cultural component is an essential and integral part of the participant's training or employment
3. the participant's training or employment takes place in a public setting where the sharing can be achieved through his or her direct contact with Americans
4. the American public will derive an obvious cultural benefit from the program. [8 CFR 214.2(q)(4)(ii)]

8.2.4 Work component

The employment or training for the international cultural exchange visitor may not be independent of the cultural component mentioned above. The work must serve as the vehicle for achieving the stated cultural objectives of the program. For example, hiring a foreign national to catalog books in a particular language for the university or college library in order to finance the stay of the alien, who at other times sings or performs a musical instrument for the general public, would not be allowed. The work in this case is not the vehicle of sharing the culture. [8 CFR 214.2(q)(3)(iii)(C)]

8.2.5 Requirements for alien participants

To be eligible for Q status, an alien must:

1. be at least 18 years old at the time the petition is filed
2. be qualified to perform the services or labor or receive the training stated in the petition
3. be able to communicate effectively about the cultural attributes of his or her home country to the American public
4. have resided and been physically outside the United States for the immediate prior year, if he or she was previously admitted as a Q nonimmigrant. The regulation does not specify that the year must be spent in the alien's home country (see Section 8.12 on change of status). [8 CFR 214.2(q)(3)(iv)]

8.2.6 Employer eligibility

Employers must submit documentation establishing their eligibility as a qualified employer under the international cultural exchange program. This documentation must include the following evidence that the employer:

1. maintains an established international cultural exchange program in accordance with the regulatory requirements;
2. has designated a qualified employee who will be responsible for administering the international cultural exchange program and serve as liaison with INS;
3. has been actively doing business in the United States;
4. will offer the foreign nationals wages and working conditions comparable to domestic workers similarly employed;
5. has demonstrated financial ability to remunerate the international cultural exchange visitor, as shown by the most recent annual report, business income tax return, or other form of certified accountant's report. [8 CFR 214.2(q)(4)(i)]

8.2.7 Preparing the petition

Using the Form I-129 and the Q classification supplement, the U.S. employer seeking to bring in an international cultural exchange visitor must demonstrate that the prospective visitor meets the requirements stated in Section 8.2.5 and provide the following information about each individual for whom the employer is petitioning:

1. date of birth
2. place of birth
3. country of nationality
4. level of education
5. position title
6. brief job description for each participant described in the petition
7. verification and certification of the qualifications of the prospective participant to provide the service or labor or receive the training described in the petition
8. statement of the wages to be paid the participant
9. certification that the wages and working conditions offered are comparable to those of local domestic workers similarly employed. [8 CFR 214.2(q)(4)(ii) and (5)(i)]

8.2.8 Filing the petition

The U.S. employer must file, in duplicate, Form I-129 and the Q supplement, with the applicable fee and the documentation mentioned in the above sections, at the regional service center having jurisdiction over the area where the services or labor will be performed or the training received or where the employer is headquartered. A new petition with appropriate documentation must be filed each time the employer wants to bring in additional international cultural exchange visitors. [8 CFR 214.2(q)(5)(i)] If the employer files multiple applications in the same calendar year, supporting documentation need not be resubmitted. In this case, a copy of the initial program approval notice may be submitted. [8 CFR 214.2(q)(4)(iii)]

8.2.9 Petition for multiple participants

The employer may include more than one participant on the petition. If the international cultural exchange visitors are in different locations abroad and plan to apply for a visa at more than one consulate, the employer must organize the names of the prospective international cultural exchange visitors by consulate. A separate petition is not required for each individual. If the participants are visa-exempt according to 8 CFR 212.1(a) and will apply for admission at more than one port of entry, the employer must list the applicants according to each port of entry. [8 CFR 214.2(q)(5)(ii)]

8.2.10 Service, labor, or training in more than one location

If the international cultural exchange visitor is required to engage in employment or training in more than one location (with the same employer), the employer must include an itinerary with the dates and locations of the services, labor, or training with the petition. [8 CFR 214.2(q)(5)(iii)]

8.2.11 Service, labor, or training with more than one employer

If the international cultural exchange visitor will be employed or trained by more than one employer, each employer must file a separate petition with the service center having jurisdiction over the location of the employment or training. The international cultural exchange visitor may work part-time for multiple employers as long as each employer has an approved petition for the international cultural exchange visitor. [8 CFR 214.2(q)(5)(iv)]

8.2.12 Substitution or replacement of participants

The employer may replace or substitute a name on a previously approved petition for the remainder of the program without filing a new Form I-129. The substituting participants must meet all the qualifications described in Section 8.2.5 above. The employer should notify the consular office by letter where the foreign national will apply for the visa (or in the case of a visa-exempt participant the port of entry of the substitute or replacement). A copy of the approved petition must be included with the letter. The employer must include the following:

1. date of birth
2. place of birth
3. country of nationality
4. level of education
5. position title
6. certification of qualification of each participant to work, serve, or be trained
7. wages and working conditions in accord with Section 8.2.6. [8 CFR 214.2(q)(6)]

8.2.13 Notice of approval or revocation of the petition

The notice of approval of a petition for an international cultural exchange program on Form I-797 includes the names of the participants, their classification as Q aliens, and the validity of the petition. A petition cannot be approved if the prospective participant already has an aggregate of 15 months in Q status and has not resided outside the United States for the immediate prior year.

Petitions for multiple participants may be denied in whole or part if some of the prospective international cultural exchange visitors are qualified and others are not.

Approval of an international cultural exchange program is revoked if the employer goes out of business, withdraws the application in writing, or terminates the international cultural exchange program before the expiration of the approved petition. [8 CFR 214.2(q)(7) and (9)]

8.3 EXTENSION OF STAY

A foreign national's total length of stay in the United States in Q status cannot exceed 15 months. Extensions up to the 15-month total may be granted as a result of an entirely new petition filed by a new employer (see Section 8.2.8) or of a new petition filed by the same employer and including the employer's previous approval notice and a letter indicating any terms or conditions of the previous petition that have changed. [8 CFR 214.2(q)(10)]

8.4 CHANGE OF EMPLOYERS

An international cultural exchange visitor in the United States on the Q visa may change employers if the new employer has an approved petition and the international cultural exchange visitor has been approved for that new program. The total time the international cultural exchange visitor may stay in the United States, however, is 15 months, regardless of the number of different employers. [8 CFR 214.2(q)(5)(v)]

8.5 OBTAINING A VISA AND ENTERING THE UNITED STATES

To obtain a Q visa and enter the United States for the purpose of participating in an approved program of international cultural exchange, the foreign national should report to the consulate indicated in the original application the prospective employer filed with the service center. Applicants present Department of State Form OF-156 and Form I-797, Notice of Action, indicating approval of the Q petition, along with a valid passport. In many cases the Notice of Action may already have been received directly from the INS service center. The consular officer may request other documents to establish that the prospective participant meets all the requirements for Q status.

Although an applicant may meet the requirements for participation in the international cultural exchange program and appear eligible for an Q visa, it is the U.S. consular officer who decides finally whether the applicant will be granted a visa (see Section 2.3.3).

8.5.1 Aliens subject to passport and visa requirements

An alien required to have a valid passport and visa for entry to the United States (see Sections 2.2.3 and 2.3.2) applies for a Q visa at a U.S. consulate or embassy in accordance with the previous section. In Taiwan, application is made at the American Institute in Taiwan.

If the visa application is approved, a visa stamp is placed in the applicant's passport, noting the period of the visa's validity and the number of entries allowed (see Section 2.3). The Form I-797 is then returned to the applicant for use in applying for admission to the United States.

When the applicant arrives at the port of entry, he or she presents to the immigration official a passport valid for at least 6 months beyond the initial contemplated period of stay, visa, and the Form I-797. If the applicant has previously been in the United States in Q status, the immigration official must be satisfied that he or she has resided and been physically present outside the United States for the immediate prior year, unless the applicant is returning to complete a previously authorized international cultural exchange program. The total time in continuous Q status cannot exceed 15 months.

Upon admitting the cultural exchange visitor to the United States, the immigration officer issues a Form I-94 (Arrival/Departure Record), showing the date and place of entry, the alien's status as a Q visitor, and the expiration date of that status.

The Form I-94 is to be surrendered upon departure, except in the case of visits of 30 days or less to Canada or Mexico. When a Q visitor who has surrendered Form I-94 upon departure subsequently reenters the United States, a new Form I-94 is issued.

Q visitors are admitted to the United States until a specified date. The period of authorized stay will be noted on Form I-797. The initial period of stay may be extended as long as the total length of the program(s) does not exceed 15 months (see Section 8.2.1).

8.5.2 Aliens not subject to passport and visa requirements

Passport and visa requirements for entry to the United States do not pertain to certain aliens. The most important exceptions to the passport and visa requirements are Canadian citizens or landed immigrants of Canada having a common nationality with Canadians who are entering the United States from the Western Hemisphere, and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia who have proceeded in direct and continuous transit from their country to the United States (see Section 2.3.2). [8 CFR 212.1] An alien in one of these categories applies directly to an immigration inspector at a port of entry for admission as a Q visitor. The procedure is otherwise the same as that followed by aliens subject to passport and visa requirements.

8.6 AUTHORIZED STAY

A Q visitor will be admitted to the United States for the period (not to exceed 15 months) of the approved international cultural exchange program, as indicated on the Form I-797, plus 30 days for participants to make travel arrangements. [8 CFR 214.2(q)(3)(ii)] Extensions of stay are possible up to the 15-month total (see Section 8.3).

8.7 MAINTENANCE OF STATUS

An alien admitted in Q status is authorized to participate only in a program of international cultural exchange with a particular employer or trainer approved by INS. Any employment not authorized in direct connection with the approved program constitutes a violation of Q status of the cultural exchange visitor.

8.8 EMPLOYMENT

Q visitors are authorized to work only for specific employers approved by INS. The employment may not be independent of the cultural component of the approved program (see Section 8.2.4). No other employment is authorized. Since the employment is specific to a particular employer, no Employment Authorization Document is required; however, an employer is obligated to complete an Employment Eligibility Verification Form I-9 (see Section 14.10).

8.9 TAX OBLIGATIONS

8.9.1 Social Security

Contributions for Social Security are to be withheld by employers. Unlike other nonimmigrant categories, Q visa holders are not exempt from paying Social Security tax.

8.9.2 Income tax

Information on a Q visitor's tax obligations may be found in IRS publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens".

8.10 VISITS ABROAD AND REENTRY

Whenever a Q visitor wishes to leave the United States temporarily and return to continue his or her approved cultural exchange program, appropriate documentation must be carried to permit entry to another country and reentry to the United States. The reentry documentation will generally include Form I-797 and a valid passport and visa (unless the international cultural exchange visitor is not subject to the passport and visa requirements).

8.11 AUTOMATIC REVALIDATION OF VISAS

An expired Q visa may be considered to be automatically revalidated to the date of application for readmission to the United States (the visa in the passport need not have a current expiration date) provided the Q visitor:

1. is applying for readmission to the United States after an absence not exceeding 30 days solely in contiguous territory;
2. has maintained and intends to resume his or her status as a Q visitor and is reentering the United States prior to the expiration of the previously authorized stay;
3. presents a Form I-797 that contains the dates of the previously authorized stay;
4. is in possession of a valid passport;
5. presents an unexpired Form I-94.

Furthermore, a person who entered the United States in a classification other than Q visitor, but whose status was subsequently changed to Q, may be considered to have the previous visa automatically revalidated and converted to a Q visa if the cultural exchange visitor meets the conditions stated above.

Thus, under these circumstances (travel solely to contiguous territory for 30 days or less), a Q visitor whose visa had expired might be saved the trouble of applying for a new visa at a consular post outside the United States.

8.12 CHANGE OF STATUS

8.12.1 Change to Q status

An alien in any nonimmigrant status except C, D, K, and, in some cases, J, plus those who entered as participants in the Visa Waiver Program, may apply for a change to Q status if he or she has maintained lawful nonimmigrant status up to the time the application is filed. Application is made on Form I-129 (Petition for Nonimmigrant Worker). The application to change nonimmigrant status is made jointly at the time of petitioning for the Q status and must include a copy of the applicant's Form I-94 and the required fee (see Appendix 1). It is also recommended that the application include previous copies of any immigration forms, such as I-20s or IAP-66s that can verify the validity of the applicant's immigration status. INS cannot approve a change to Q status if the applicant has formerly held that status for 15 months and failed to spend 12 months outside the United States before applying again for Q status.

8.12.2 Change to another nonimmigrant status

A Q alien may apply to change to another nonimmigrant status for which he or she is eligible by completing Form I-539 and the supporting documentation described in the instruction sheet attached to that form.

8.12.3 Reentry to obtain new status

A Q visitor may obtain a new nonimmigrant status (other than Q) by leaving the United States, obtaining a new visa at a U.S. consular post abroad, and reentering with a new visa and supporting documentation.

8.13 DEPARTURE UPON TERMINATION OF STATUS

A Q visitor has 30 days to depart from the United States after completing the authorized international cultural exchange program. [8 CFR 214.2(q)(3)(ii)] The 30 days are added to the duration of the approved program.

A Q visitor departing from the United States (to places other than Canada or Mexico for 30 days or less) must surrender his or her Form I-94 to (1) a representative of the carrier providing transportation out of the United States at the time of boarding, (2) a Canadian immigration officer at the United States–Canada border, or (3) a U.S. immigration officer at the United States–Mexico border.

8.14 SPOUSE/DEPENDENT STATUS

No special provision has been made for dependents of a Q alien. Therefore, as with other visas such as the TN (Trade NAFTA) may be possible for a spouse or child to apply for a B-2 tourist visa in order to accompany or follow to join the Q alien in the United States.

8.15 DIFFERENCES FROM J, O, P, AND H STATUSES

The Q visa is designed to fill a special niche of activity in the United States. As stated in Section 8.1, the category was conceived to facilitate the kind of program run by the Epcot Center at Disney World, a program dedicated to exposing Americans to cultures from abroad. Its differences from the J, O, P, and H statuses are outlined below.

8.15.1 Differences from J status

The J exchange-visitor program has several categories that might accommodate an alien engaging in activities similar to those of a Q visitor but in a college or university setting. However, most of these categories are inappropriate for the kind of distinct cultural exchange program intended by the Q visa. The most commonly used categories of student or research scholar/specialist are distinct and require other qualifications that may eliminate a potential participant in the Q program.

No two-year home-country residence requirement exists for the Q visa as it may for the J (see Section 9). Note, however, that a Q alien is effectively barred from reentering the United States in Q status after completing 15 months of an international cultural exchange program until he or she has been physically present outside the United States for the immediate prior year.

8.15.2 Differences from O status

The central difference between Q and O aliens is that the O alien must meet standards unreachable for most prospective Q applicants (see Section 6.2.2). The length of stay for an O alien is 3 years, with incremental 1-year extensions possible. This certainly recommends the O status over the Q, with its 15-month limitation.

8.15.3 Differences from P status

The P visa (see Section 7) is also a result of the 1990 Act. This visa category has three subsets: P-1 status is intended for "internationally recognized" artists and athletes; P-2 is reserved for those artists and entertainers who are part of a "reciprocal exchange" program between organization(s) in the United States and organization(s) abroad; the P-3 category is reserved for artists and entertainers who perform as part of a "culturally unique" program. Culturally unique is defined as a style of expression, methodology, or medium that is unique to a particular society, class, religion, ethnicity, tribe, or other group of persons. This shares some aspects of the Q definition, but the length-of-stay limitations in the P category are less liberal. Initial admission in P-3 status is limited to 6 months with one 6-month extension permitted, upon application, to complete an event.

8.15.4 Differences from H-1B status

An H-1B temporary-worker may work in the United States for up to 6 years. The requirement of at least a bachelor's degree for the H-1B (see Section 10.3.2) may, however, eliminate some individuals who might otherwise qualify. The Q visa has no clearly defined education requirement. Other restrictions, such as limitations as to the specific employer and the location of employment, are identical to the requirements of H-1B status.

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SECTION 9

J Status: Exchange Visitors

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IAP-37	Exchange Visitor Program Application
IAP-66	Certificate of Eligibility for Exchange Visitor Status
IAP-87	Update of Information on Exchange Visitor Program Sponsor

9.1 GENERAL INFORMATION, ENABLING LEGISLATION, AND PURPOSES

In 1948 Congress passed the U.S. Information and Educational Exchange Act, also called the Smith-Mundt Act, the objectives of which were to "promote a better understanding of the United States in other countries, and to increase mutual understanding between the people of the United States and the people of other countries." [PL 80-402, Sec. 2] The 1948 Act was the original basis for today's system of government-sponsored and government-operated official exchanges between the United States and other countries. It also established the Exchange Visitor system (and terminology) with private sector sponsors being involved from the outset. Educational activities in both academic and training programs were an important part of these early exchanges. Thirteen years later the Fulbright-Hays Act, formally titled the Mutual Educational and Cultural Exchange Act of 1961, established the "J" letter and visa class and initiated or expanded a number of exchange avenues and activities including but not limited to radio, television, film, and print media. The 1961 Act stated in section 101 that its purpose was to

> enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world. [PL 87-256, 21 September 1961, Sec. 101, as amended]

The portion of each of these two acts of immediate and special interest to educational institutions is the Exchange Visitor Program and the host of individual exchanges it promotes and makes possible.

In its infancy the Exchange Visitor Program was administered by the Department of State. Participants were admitted as tourists with a special exchange notation on the Form I-94. The Department of State wrote the initial regulations governing the program. The entire body of the regulations and procedures developed by the State Department was reviewed by the Congress in 1961 and was adopted without change in the passage of the Fulbright-Hays Act. In 1978 the programmatic and policy administration of the program was moved from the Department of State to the Educational and Cultural Affairs Bureau (also called the E Bureau) of the United States Information Agency (USIA). (USIA often refers to itself as the "Agency" in written materials. Both "USIA" and the "Agency" are used in this section.) In 1983, as a result of internal administrative and personnel decisions, USIA moved administration of the program from the E Bureau to the USIA Office of General Counsel. Many long-time sponsors view this transfer as substantive, and in many ways negative in its effect on the program. They point to the housing of a programmatic function in the general counsel's office as exceptional among government agencies. Certainly sponsors and responsible officers who experienced this transition have noticed a shift in emphasis from program issues (how to facilitate an exchange) to regulatory issues (control and regulation of exchange).

The Exchange Visitor Program is used to bring students, trainees, teachers, professors, research scholars, specialists, international visitors, camp counselors, and participants in summer student travel/work programs to the United States for a variety of educational and cultural exchange purposes under sponsorship of an agency or organization that has been designated as an exchange visitor sponsor by USIA. The participants range from camp counselors, students, and trainees to senior university faculty and senior members of foreign governments. It is the underlying philosophy of educational and cultural exchange and the fostering of international understanding that sets the Exchange Visitor Program and its J-1 visa apart from all other nonimmigrant visa classes (see Section 2), even though those may also provide individually for similar kinds of activities. The program is also administratively unique in that it is administered not by the Immigration and Naturalization Service (INS) or the Department of State but by the USIA and the individual programs it designates.

Title 22 of the *Code of Federal Regulations*, Part 514, contains the bulk of the regulations implementing and governing the Exchange Visitor Program. Over the decades innumerable interim final rules, regulatory changes, and statements of policy and procedures, both written and oral, have been published or announced publicly by the Department of State and USIA. This wide variety of publications and announcements resulted in even wider variations in the understanding and interpretation of regulations and policy by individual exchange visitor programs and eventually led to close scrutiny of the program by the General Accounting Office (GAO). In response to a GAO report on the operation of the Exchange Visitor Program, USIA in 1990 undertook a complete review of the regulations. The new regulations, published in the *Federal Register*, 19 March 1993, are applicable to all exchange visitor programs, regardless of their antiquity, their designation date, or their program description. For some programs, such as training programs, there are special rules. Sponsors of all programs are encouraged to read the regulations carefully, to examine their program operations, and to make no assumptions as to compliance regarding the operation of current programs.

In examining their programs and in reading the regulations and this manual sponsors should understand and remember an important characteristic of the Exchange Visitor Program and rules governing it. The program has always served, in part, as a foreign policy tool. USIA has asserted that this foreign policy character exempts the program from the provisions of the Administrative Procedures Act (APA). The APA governs the way government agencies make rules and requires a certain level of accountability of the agencies to the public. In the preamble to proposed rules published in November 1991 USIA stated:

> The Agency is inviting comments from the public on the proposed regulations notwithstanding that it is under no legal requirement to do so. The designation of exchange visitor sponsors and administration of the Exchange Visitor Program are a foreign affairs function.
>
> The Administrative Procedures Act, 5 U.S.C. 553(a)(1)(1989), specifically exempts from application of the Act a "foreign affairs function of the United States." [*Federal Register*, 25 November 1991, p. 59826]

Since USIA's assertion of a foreign policy exemption has not been challenged in the courts, USIA may attempt to make unilateral changes in the regulations without prior notice and without soliciting the opinions of sponsors or others involved in the Exchange Visitor Program. While USIA is to be commended for its efforts to obtain comments from sponsors and the general public in this major rulemaking, that cooperative attitude is reflective of the leadership at USIA, not of a regulatory or legal mandate. Each time there is new leadership at USIA and in its General Counsel's Office, the approach to rulemaking and to communication with sponsors will change to some degree.

9.1.1 Definitions

22 CFR 514.2 and 514.4 define terms and categories specific to the Exchange Visitor Program and related to other United States laws and regulations. "Exchange Visitor," "Exchange Visitor Program," and "accredited educational institution" are defined here. Other terms are defined or referenced in appropriate sections.

9.1.1.1 Exchange visitor

The Immigration and Nationality Act of 1990 (the Act) defines "J" nonimmigrant classification as

> an alien having a residence in a foreign country which he [or she] has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he [or she] is coming to the United States to participate in a program under which he [or she] will receive graduate medical education or training, also meets the requirements of 212(j), and the alien spouse and minor children of any such alien if accompanying him [or her] or following to join him [or her]. [Act 101(a)(15)(J)]

Both the principal and the spouse and children are included in the nonimmigrant class "J." USIA defines "Exchange Visitor" as a "foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily in J-1 visa class. The term does not include the visitor's immediate family." [22 CFR 514.2] The principal is the exchange visitor and is designated as being in J-1 status; the spouse and minor children of the principal are designated as being in J-2 derivative status, but by definition are not "exchange visitors." These two definitions have subtle differences that are important in certain legal and regulatory contexts. Minor children are unmarried children under the age of 21. [Act 101(b) and (c) and 22 CFR 514.2]

9.1.1.2 Exchange Visitor Program

"Exchange Visitor Program means the international exchange program administered by the Agency to implement the Act by means of educational and cultural programs. When 'exchange visitor program' is set forth in lower case, it refers to the individual program of a sponsor which has been designated by the Agency." [22 CFR 514.2]

9.1.1.3 Accredited educational institution

Accredited educational institution means any publicly or privately operated primary, secondary, or post-secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which such institution is located; provided, however, that in addition to any state recognition, all post-secondary institutions shall also be accredited by a nationally recognized accrediting agency or association as recognized by the United States Secretary of Education but shall not include any institution whose offered programs are primarily vocational in nature. [22 CFR 514.2]

9.1.2 Application for exchange visitor program designation and redesignation

9.1.2.1 Designation

9.1.2.1.1 Application and designation procedures. Designation of an exchange visitor program is a process in which USIA evaluates a prospective sponsor and the activities that sponsor intends to offer and grants permission to that sponsor to supervise and operate an exchange visitor program. The three categories of sponsors eligible to apply for exchange visitor program designation are: "(1) U.S. local, state and federal government agencies; (2) international agencies or organizations of which the United States is a member and which have an office in the United States; and (3) reputable organizations which are 'citizens of the United States.'" [22 CFR 514.3] The third category is the one generally applicable to colleges and universities and to private organizations providing exchanges. [22 CFR 514.3-6]

The discussions in this chapter are directed primarily toward educational institutions and their exchange visitors. To qualify for designation a school is required to demonstrate its ability to comply and remain in continual compliance with all provisions of the regulations and to meet the financial obligations and responsibilities attendant to the successful sponsorship of its exchange visitor program. Application is made on Form IAP-37 and is submitted to the Exchange Visitor Program Services Office in the Office of General Counsel of USIA, along with supporting documents as to the applicant's legal status, financial responsibility, accreditation, licensure, U.S. citizenship of the sponsor and the responsible and alternate responsible officers, and certification signed by the chief executive officer of the applicant school that the responsible officer will be provided sufficient staff and resources to fulfill his or her duties and obligations on behalf of the sponsor. USIA may request additional information. [22 CFR 514.5] "Designations are effective for a period of 5 years. In its discretion, the Agency may designate programs, including experimental programs, for less than 5 years." [22 CFR 514.6(c)] Note that the regulations include lawful permanent residents in the definition of "citizen of the United States." [22 CFR 514.2] This inclusion permits lawful permanent residents to serve as responsible officers and to be counted as a U.S. citizen member of a board of directors for the purpose of establishing that a sponsor is a U.S. organization or corporation.

In applying for designation of an exchange visitor program, the applicant agrees to abide by general program requirements, including a minimum of five exchanges (i.e., participants) per year, a minimum duration of 3 weeks for each participant, reciprocity of exchange, and the provision of cross-cultural activities. [22 CFR 514.8] There are exceptions for short-term scholars (see Section 9.7). The applicant also agrees to meet sponsor obligations, including adhering to agency regulations, maintaining legal status, maintaining accreditation and licensure, representing the program to the public in ways permitted by the regulations, providing information to USIA upon request, and providing information to individual exchange visitors as specified by USIA. [22 CFR 514.9] The applicant may request designation for all of the categories and activities for which it anticipates a need (see Section 9.4) and for which it can provide appropriate exchange experiences.

The Exchange Visitor Program Services Office will evaluate the application on the basis of the information contained in the application and other information that may come to its attention. Initial designation will be granted for a period of 5 years or less at the discretion of USIA. The sponsor may engage only in those activities specified in the designation. Designations are not transferable or assignable, and the sponsor must apply for redesignation every 5 years (see Section 9.1.2.4). [22 CFR 514.6 and .7]

If the application is approved, USIA will assign a program number and program description and will designate the individual specified in the application as the exchange program's representative or the "responsible officer" for the approved exchange visitor program. In the original application or subsequently, the responsible officer may name an alternate responsible officer or officers who will share the responsibilities of administering the program. USIA encourages the designation of alternate responsible officers as necessary to provide for proper administration of the program. [22 CFR 514.2] Official correspondence between the sponsor and USIA concerning a designated program may be conducted only by the responsible officer or the designated alternate(s). [22 CFR 514.11] All references in this text to the responsible officer are meant to include all designated alternate responsible officers.

It may take 6 months or longer for USIA to complete its review of the application, grant designation, and issue a supply of Forms IAP-66.

9.1.2.1.2 Exchange visitor program numbers. USIA assigns a number to each approved exchange visitor program to identify its type. The following list was included in an earlier version of the Exchange Visitor Program regulations. While it is not listed in the current regulations, USIA has confirmed that this numbering system remains operational.

G-1: Programs sponsored by USIA

G-2: Programs sponsored by the Agency for International Development

G-3: Programs sponsored by the Department of State

G-4: Programs sponsored by international agencies or organizations in which the U.S. government participates

G-5: Programs sponsored by other national, state, or local government agencies

P-1: Programs sponsored by educational institutions, such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research

P-2: Programs sponsored by hospitals and related institutions

P-3: Programs sponsored by nonprofit associations, foundations, and institutions

P-4: Programs sponsored by business and industrial concerns

A program number consists of one of these letter/number designations identifying the kind of program and an additional number specific to the program. For example, P-1-xxx refers to a university or similar program (P-1) with a unique number (xxx) assigned to the university. The responsible officer must refer to the assigned program number in any correspondence with USIA, the INS, or consular officers regarding the program or participants in the program.

9.1.2.2 Training program designation

USIA will designate training programs only in "specialty" and "non-specialty" occupations. Training in "unskilled" occupations will not be designated. USIA defines 11 specialty and non-specialty occupational categories in which it will designate training programs (see Section 9.9.2). Sponsors may conduct programs only in the categories and at the levels (specialty or non-specialty or both) for which designation has been approved. [22 CFR 514.22(c)(2)] If a sponsor decides at a later date to add a new type of training, the sponsor need not apply to be redesignated but may submit an application to have an existing designation amended by the addition of one or more new training categories and/or levels.

A sponsor of a flight training program must be accredited or in the accreditation process at the time of application for designation. Since the accreditation process can take up to 1 year, an applicant that is not yet accredited, but has begun the process, will be designated on a conditional basis for 12 months. [22 CFR 514.22(n)(1)(iii)]

Training programs, both independent and university connected, are among the oldest and most successful exchange programs; until 1983, "trainee" was listed frequently as one of the categories of approved sponsorship for universities. Although "[t]he Agency is of the opinion that the vast preponderance of the exchange visitor training programs are conducted well within the legislative authorities created by the Act," [*Federal Register*, 19 March 1993, p. 15187] the separate treatment of training programs exemplifies what seems to many to be a presumption by USIA that training programs are somehow suspect, more prone to abuse, and deserving of closer scrutiny than other programs. For further discussion of these issues readers are referred to *International Educator* 3, 1 (Spring 1993): 9-13.

9.1.2.3 Consortium designation

"Consortium means a not-for-profit corporation or association formed by two or more accredited educational institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members. Entities that participate in a consortium are not barred from having a separate exchange visitor program designation of their own." [22 CFR 514.2]

Sponsor members of a consortium must meet the eligibility and program administration requirements either individually or collectively as appropriate. For example, each sponsor must meet the citizenship requirements individually, but the consortium may collectively meet the requirement for conducting at least 5 exchanges per year minimum collectively. The consortium, as a single entity, may apply for designation. It is composed of, but different from, its constituent members. As this is a new concept at USIA, prospective consortium members or consortia applicants are encouraged to create programs which meet their needs and to expect to work closely with USIA to obtain designation and organize and implement the program.

With consortium designation, USIA has provided for creative and innovative cooperative efforts. Two examples follow. Several small schools in the same state or area, which may not be able to provide the requisite 5 exchanges per year, may join together to maintain an active exchange. Institutions in different parts of the country that have common interests such as environmental concerns or agricultural applications of genetic engineering could establish a consortium to sponsor individuals who will conduct research or consult at several of these institutions in one visit. By definition participants in a consortium are explicitly permitted to have their own separate exchange visitor programs in addition to their consortium participation.

9.1.2.4 Redesignation

In justifying a programwide and subsequent periodic redesignation, USIA states that "such periodic designations will allow the Agency to track program life cycles, efficiently cancel inactive programs, and most importantly, monitor the activity within and direction of designated exchange programs." [*Federal Register*, 19 March 1993, p. 15181] (Because all such information is already obtainable from statistical information sent to USIA on the Forms IAP-66 issued to exchange visitors for various purposes the exchange community unanimously opposed the blanket requirement that all active programs be redesignated. That opposition, however, failed to convince USIA of the inefficiency and redundancy of such a process.) [22 CFR 514.7 and letter from USIA of 19 March 1993 to all sponsors]

9.1.2.4.1 One-time redesignation of all programs. During 1993–95 the Agency is undertaking a systematic redesignation (reapplication) of all programs and will contact each sponsor directly. It is interesting to note that USIA describes this one-time redesignation [*Federal Register*, 19 March 1993, p. 15181] as a phase of the quinquennial redesignation (see Section 9.1.2.4.2), but it is absent from the text of the regulations. During this special redesignation of all programs, each sponsor is urged to examine its current designation and compare it to the exchange visitor categories and activities as described in the new regulations. Certain categories such as "short-term scholar" or "specialist" must be requested as an addition to the sponsor's program. USIA has removed "international visitor" from institutional designations and reserved that category for USIA use. USIA has stated that the "trainee" category requires a completely separate application with a new program designation and number (see Section 9.1.2.2).

9.1.2.4.2 Quinquennial redesignation of each program. The one-time redesignation date will mark the beginning of the 5-year count for future redesignation. Application for redesignation must be made not less than 4 months before the current designation expires. The sponsor may apply by letter or by a notation on the annual report. The Agency will evaluate the request for redesignation according to the criteria used for initial designation and take into account the sponsor's annual reports and other documents reflecting its record as an exchange visitor program sponsor. It is difficult to imagine a situation in which redesignation would be denied absent a finding of inactivity. Any other basis for denial should be handled through the sanctions procedures (see Section 9.2.10). While the redesignation decision is pending, the sponsor may continue to operate its program. Sponsors will note, of course, that the critical fourth month preceding the end of the fifth year after the last redesignation may slip through the sponsor's administrative net, resulting, it is presumed, in a sanction action by USIA. Sponsors may wish to make it a practice to check the redesignation box every year when the annual report is submitted. This would easily meet the requirement of making the request 4 months in advance of expiration and would ensure that a request is filed before expiration of the designation period. USIA has expressed no opposition to this procedure.

9.2 OPERATION AND ADMINISTRATION OF AN EXCHANGE VISITOR PROGRAM

USIA divides requirements for operation and administration of an exchange visitor program into distinct, but related parts that include general program requirements, general obligations of sponsors, program administration, duties of responsible officers, control of Forms IAP-66, notification requirements, insurance, and annual reports. In administering a program it is important to understand both the nature of each requirement and the entity, whether sponsor, responsible officer, or exchange visitor participant, that is responsible for meeting each requirement.

To operate and administer a program a sponsor must:

- maintain the organizational characteristics which qualify it for sponsorship;
- understand and follow the regulations governing the Exchange Visitor Program;
- appoint and support a responsible officer and alternates;
- select participants who are qualified under the sponsor's exchange visitor program;
- provide appropriate experiences, guidance, and services to the exchange visitor participants; and
- submit appropriate documents and reports to USIA and to other organizations to maintain designation for the sponsor and status for its participants.

9.2.1 General program requirements

A sponsor other than a federal government agency must sponsor at least five exchange visitors per calendar year. For new or developing programs or for other good cause, the Agency may allow the exchange visitor program to have fewer than five participants. If the sponsor believes it cannot meet this minimum in a calendar year, it should contact the Agency to discuss the situation and arrange for an exception.

A sponsor other than a federal government agency must provide each exchange visitor with a program of at least 3 weeks duration. The Agency has stated that it believes this is the minimum amount of time in which to provide a meaningful experience. The one exception is the short-term scholar (see Section 9.7).

A sponsor must make a good faith effort to achieve the fullest possible reciprocity in the exchange of persons. The term "reciprocity" is interpreted broadly and generally does not require a one-for-one correspondence of persons or activities:

> For example, exchange visitors coming to the United States for training in American banking practices and Americans going abroad to teach foreign nationals public administration would be considered a reciprocal exchange, when arranged or facilitated by the same sponsor. [22 CFR 514.2]

A sponsor must provide access to two kinds of cross-cultural experiences for participants. It must

> make available to exchange visitors a variety of appropriate cross-cultural activities. The extent and types of the cross-cultural activities shall be determined by the needs and interests of the particular category of exchange visitor. Sponsors will be responsible to determine the appropriate type and number of cross-cultural programs for their exchange visitors. The Agency encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions.

In addition, a sponsor must "encourage exchange visitors to voluntarily participate in activities which are for the purpose of sharing the language, culture, or history of their home country with Americans, provided such activities do not delay the completion of the exchange visitors' programs." USIA considers that college and university campuses usually provide many opportunities for these kinds of experiences. [22 CFR 514.8]

9.2.2 General obligations of sponsors

Sponsors must adhere to all regulations governing the exchange program. These regulations appear primarily in 22 CFR 514. [22 CFR 514.9(a)]

Sponsors must maintain legal status as a university, partnership, corporation, etc. Any change in the status of the sponsor should be reported to the Agency and may require a new program designation. [22 CFR 514.9(b)]

Sponsors must "remain in compliance with all local, state, federal, and professional requirements necessary to carry out the activity for which they are designated, including accreditation and licensure, if applicable." [22 CFR 514.9(c)]

Sponsors must represent themselves to the public and to exchange visitors as required by the regulations and must communicate appropriately with exchange visitors and USIA. This section of the regulations is designed in part to ensure that all participants in the exchange process are fully informed about the nature and extent of the exchanges being offered. Sponsors must:

> (1) provide accurate and complete information, to the extent lawfully permitted, to the Agency regarding their exchange visitor programs and exchange visitors;
>
> (2) provide only accurate information to the public when advertising their exchange visitor programs or responding to public inquiries;
>
> (3) provide informational materials to prospective exchange visitors which clearly explain the activities, costs, conditions, and restrictions of the program;
>
> (4) not use the program numbers on any advertising materials or publications intended for general circulation; and
>
> (5) not represent that any program is endorsed, sponsored, or supported by the Agency or the United States Government, except for United States Government sponsors or exchange visitor programs financed directly by the United States. However, sponsors may represent that they are designated by the Agency as a sponsor of an exchange visitor program. [22 CFR 514.9(d)]

Sponsors are required to maintain financial integrity sufficient to carry on the exchange visitor program.

> (1) Sponsors shall maintain the financial capability to meet at all times their financial obligations and responsibilities attendant to successful sponsorship of their exchange visitor programs.
>
> (2) The Agency may require non-government sponsors to provide evidence satisfactory to the Agency that funds necessary to fulfill all obligations and responsibilities attendant to sponsorship of exchange visitors are readily available and in the sponsor's control, including such supplementary or explanatory financial information as the Agency may deem appropriate such as audited financial statements.
>
> (3) The Agency may require any non-government sponsor to secure a payment bond in favor of the Agency guaranteeing all financial obligations arising from the sponsorship of exchange visitors. [22 CFR 514.9(e)]

Sponsors must provide "adequate staffing and sufficient support services to administer their exchange visitor programs" and ensure that all "employees, officers, agents, and third parties involved in the administration of their exchange visitor programs are adequately qualified, appropriately trained, and comply with the Exchange Visitor Program regulations." [22 CFR 514.9(f)]

Taken together with the program and sponsor requirements enumerated elsewhere in the regulations, this support and staffing requirement represents a significant commitment on the part of the sponsor.

Sponsors must identify an individual, a responsible officer, who will administer the program according to the regulations. The Agency permits and encourages the appointment of alternate responsible officers [22 CFR 514.2] as necessary to meet the administrative demands of the program. Generally responsible and alternate responsible officers must be employees or officers of the sponsor, but USIA may at its discretion authorize the appointment of individuals who are not employees or officers of the sponsor as alternate responsible officers, with the approval of the sponsor. The Agency reserves the right to limit the number of alternate responsible officers. [22 CFR 514.9(f)]

9.2.3 Program administration

Program administration refers to the daily operation of the program and includes selecting participants, providing prearrival and orientation information to participants, issuing Form IAP-66, overseeing the general activities of the participant, communicating with the Agency, and maintaining records on the program. Some of these responsibilities may be met in part by providing to participants a brochure prepared by USIA for this purpose. Sponsors may order the brochure, "Welcome to the Exchange Visitor Program," in bulk from USIA using Form IAP-87. The current version of the IAP-87 does not list the brochure, so the title and number of copies requested must be written or typed onto the form. USIA information will of necessity be general in its application, and the sponsor must prepare other information applicable to participants in its program. Together the brochure and the sponsor's publications and services must meet the program administration requirements. (See Section 9.7 for exemptions for short-term scholars.) Specific responsibilities follow.

9.2.3.1 Selection of participants

The sponsor must establish and use a system to screen and select participants so as to ensure that they are eligible for the program and to provide experiences appropriate to their background, needs, experiences, and English-language abilities. (See Section 9.2.3.4.)

9.2.3.2 Prearrival information

The sponsor must provide prearrival information which includes, at a minimum, information on:

- the purpose of the Exchange Visitor Program;
- the home country physical presence requirement;
- travel and entry into the United states;
- housing;
- fees payable to the sponsor;
- other costs, such as living expenses, likely to be incurred;
- insurance requirements and health care; and
- other information which will assist exchange visitors to prepare for their stay in the United States. [22 CFR 514.10(b)]

9.2.3.3 Orientation

The sponsor must offer appropriate orientation for all exchange visitors and is encouraged to provide it for the participants' family members who will be in the United States for more than a year. The regulations do not require and sponsors cannot ensure that exchange visitors, in fact, attend or participate in such orientation. The offered orientation should include at a minimum information on:

- life and customs in the United States;
- local community resources, such as public transportation, medical centers, schools, libraries, recreation centers, and banks;
- health care, emergency assistance, and insurance coverage;
- description of the program in which the exchange visitors are participating;
- rules that the exchange visitors are required to follow under the sponsor's program;
- address of the sponsor and the name and telephone number of the responsible officer;
- address and telephone number of the Exchange Visitor Program Services Office of the Agency and a copy of the Exchange Visitor Program brochure (see Section 9.2.3) outlining the regulations relevant to exchange visitors. The sponsor is also encouraged to keep a copy of the regulations available to program participants in the international services office, the school library, or some other easily accessible location.

9.2.3.4 Form IAP-66

The sponsor must ensure that only the responsible officer or alternate responsible officer issues Form IAP-66. With signatory authority on the Form IAP-66 the responsible officer also has the responsibility to ensure that the form is issued in accordance with regulations to qualified and eligible participants for purposes and activities authorized under the program. (See Section 9.2.5.) The regulations do not define the terms "qualified" or "eligible," which are sometimes used interchangeably. In the context of the regulations "qualification" seems to differ from "eligibility" in that qualifications generally refer to the prospective participant's knowledge, skills, or background, while eligibility generally refers to conditions or proposed activities which are allowed or disallowed.

9.2.3.4.1 Qualification of participants. The kind of program and the categories of exchange visitors approved for the program help determine how the sponsor evaluates qualification for participation. For example students or trainees would generally meet admission requirements which help determine that their learning and skills are sufficient to participate in the education or training. Further, they might be placed in English or other remedial courses as necessary. A scholar or specialist might be evaluated based on degrees held, papers published, or other evidence of ability to benefit from and contribute to the exchange experience.

9.2.3.4.2 Eligibility of participants. The regulations specify certain grounds of ineligibility which may apply only to a particular category. A student may meet admission requirements but be ineligible for sponsorship because all funding is from personal sources. A professor may be eminently qualified for a teaching position, but ineligible for sponsorship because the position offered is tenured or tenure-track. (See selection criteria on specific categories for more details.) Occasionally staff at USIA express, orally or in writing, opinions regarding grounds of ineligibility which are not supported by the regulations. Two of these, "repeat visitors" and "waiver applicants," cause difficulties for sponsors.

9.2.3.4.2.1 Repeat visitors. The term "repeat visitor" appears nowhere in the regulations. Staff at USIA coined the term to refer to individuals who terminate and later return to the same or a different program. The term has appeared in letters to sponsors during the one time redesignation (see Section 9.1.2.4.1) along with an admonition that such program participants are somehow irregular or unacceptable. There is no regulatory basis for the term or the negative connotation associated with it by USIA. NAFSA has expressed its concern directly to USIA in a position paper. (See Appendix 12)

Although not addressed in the regulations, the situation is well known to many educational institution sponsors and often presents an interpretive and logistical challenge to the responsible officer. For example, a professor at a foreign university will be doing collaborative research and teaching in the field of tropical conservation with a U.S. university over a period of several years. She maintains her full professor appointment at her home institution. She spends every summer with graduate students and colleagues from both schools at the research station in Central America. She teaches one upper level graduate course each year at the U.S. university and may make periodic consulting trips to the U.S. university throughout the year. The responsible officer must decide whether to issue one Form IAP-66 for a year at a time or a three year period or to issue short duration Forms IAP-66 consecutively as needed. A single program of one to three years' duration makes travel easy and permits employment (see Section 9.6.4) with the U.S. university at any time during the covered period, but only three or four months out of 12 may be spent in the United States, and a successful long term project might necessitate a future request for an exceptional extension (see Section 9.6.5). Short, intermittent programs, technically a new program each time, would cause the Forms IAP-66 to represent more accurately the true exchange activity, but may complicate visa application and travel and subject the exchange visitor to increased scrutiny by consular officers and by USIA. responsible officers will need to review and discuss each such case individually with the prospective exchange visitor and with appropriate academic and administrative personnel at the sponsoring institution.

9.2.3.4.2.2 ***Waiver applicants.*** Nothing in the regulations speaks to the eligibility for sponsorship of someone who has obtained or is attempting to obtain a waiver of the two year home country physical presence requirement (see Section 9.14). Even though the regulations are silent on this issue, letters from USIA staff to individual sponsors have directed responsible officers to withhold Form IAP-66 from certain individuals or have advised responsible officers to withhold Form IAP-66 from any exchange visitor who has taken action to obtain a waiver. USIA confirms that while it has a general disinclination to have waiver applicants continue in the program, the Agency did not address this issue in the regulations and has published no formal opinion on the issue. [*Government Affairs Bulletin,* Vol.10, No.3, January 1994] NAFSA has expressed its concern regarding application to exchange visitor programs of opinion and policy which is neither published nor supported by regulations. (See Appendix 13.)

9.2.3.4.2.3 ***Persons who will not participate in the sponsors's program.*** At times in the past USIA has permitted a sponsor to issue a Form IAP-66 for sponsorship of someone who will not be in the sponsor's program and may not be in one of the sponsor's approved categories. For example, a college or university might issue a Form IAP-66 for a teacher (see Section 9.4) who will teach at a local high school. On rare occasions USIA has permitted this kind of sponsorship on a special or emergency basis in the general interest of academic exchange. Considering the specificity in the regulations regarding program designations and control of the Form IAP-66, sponsors are cautioned to reconfirm with USIA any such current arrangement and to obtain approval in writing from USIA for any similar arrangement in the future.

9.2.3.5 Monitoring of exchange visitors

The sponsor must monitor the participation of exchange visitors in the program to ensure that the participants engage in activities described on the Form IAP-66, make reasonable progress, and keep the sponsor apprised of their address and telephone number. "Sponsors shall monitor, through employees, officers, agents, or third parties, the exchange visitors participating in their programs." [22 CFR 514.10(e)] The sponsor may, but is not required to, conduct this monitoring through direct contact with the participants. For example, student monitoring might be conducted by the office of the registrar in its normal conduct of business, while monitoring of a professor or research scholar might be done directly by the faculty adviser or department chairman. When relying on this kind of monitoring, it is important for the responsible officer to establish and maintain communication with the registrar, faculty adviser, or other person appropriate to the sponsor's organizational structure who can provide adequate oversight of the program and see to the welfare of the exchange visitor. Note that "third party" is a defined term and means "an entity cooperating with or assisting the sponsor in the conduct of the sponsor's program. Sponsors are required to take all reasonable steps to ensure that third parties know and comply with all applicable provision of these regulations. Third party actions in the course of providing such assistance or cooperation shall be imputed to the sponsor in evaluating the sponsor's compliance with these regulations." [22 CFR 514.2] This third party reference has significance relative to activities and employment at a location other than the sponsor's premises as might be encountered with professors, researchers, short-term scholars, trainees, or specialists working at other institutions or corporate facilities. [22 CFR 514.10(e)]

9.2.3.6 Requests by the Agency (USIA)

"Sponsors shall, to the extent lawfully permitted, furnish to the Agency within a reasonable time all information, reports, documents, books, files, and other records requested by the Agency on all matters related to their exchange visitor program." [22 CFR 514.10(f)] It is recommended that sponsors distinguish, with the aid of their general counsel, the kinds of information that may be provided immediately and without permission from the kinds of information that require review and approval before release. In general, "directory information" is public and can be provided without delay. Other identifying or qualitative information often requires written release.

9.2.3.7 Inquiries and investigations

"Sponsors shall cooperate with any inquiry or investigation that may be undertaken by the Agency." [22 CFR 514.10(g)] As the organization established by the federal government to administer the Exchange Visitor Program, the Agency has the right to investigate the operation of any of its designated programs. Sponsors are advised to consider any such investigation a serious matter and to consult counsel as appropriate.

9.2.3.8 Retention of records

"Sponsors shall retain all records related to their exchange visitor program and exchange visitors for a minimum of 3 years." [22 CFR 514.10(h)] See Section 9.9.3.3 for special rules pertaining to training programs.

This regulation refers only to records. It does not say whether the regulation might apply differentially to program-related or exchange visitor-related records. For a program continuing for decades a full record of the life of the program would provide useful historical and programmatic information. Sponsors often find it necessary to refer to past correspondence with USIA and Department of State to resolve current issues. Discarding program records after 3 years seems ill-advised, unless the program has been terminated or canceled. Similarly it would seem prudent to retain all the records, regardless of age, of an individual still in a program. Logically, then, this 3-year rule must apply to records of individual exchange visitors who have completed or terminated a program. The regulations do not specify the form of record retention. Many institutions convert files to microform or electronic/magnetic media. Nothing in the regulations precludes such conversion. [22 CFR 514.10]

9.2.4 Duties of responsible officers

"Responsible officers shall train and supervise alternate responsible officers." [22 CFR 514.11] The following requirements apply to responsible officers and their alternates.

9.2.4.1 Knowledge of regulations and codebook

"The sponsor must be thoroughly familiar with the Exchange Visitor Program regulations and the Agency's current Codebook and Instructions for Responsible Officers." [22 CFR 514.11(a)] These USIA publications are issued to new program sponsors and to sponsors for which redesignation has been approved.

The regulations serve as the guide and instructions for program administration. Only by being thoroughly familiar with the regulations can a responsible officer make reasoned judgments on how to apply them. Where the regulations are specific, responsible officers are required to administer the program with specificity. Where the regulations are silent USIA has, by that silence, indicated that no formal policy exists on a question or issue. responsible officers must use their good judgment in program administration in these areas. A thorough knowledge of the regulations is especially critical should it become necessary to contact USIA with a question concerning program administration. For USIA to provide appropriate, informed answers to inquiries, those inquiries must be specific and stated in the context of the regulatory language. Colleagues at other institutions and USIA staff can provide an opportunity to discuss an administrative or ethical question, but the responsible officer on site, guided by the regulations, must make decisions appropriate to a situation.

USIA has not yet updated the Codebook to comport with the regulations. Alternate instructions regarding enumeration of categories accompany the redesignation letters (see Sections 9.1.2.4.1 and 9.2.5.3). Sponsors should remember that the regulations, not the Codebook, represent current instructions for program administration. The subject and field codes remain the same, although USIA is aware that both need to be revised to represent more accurately current academic fields, and business and training activities.

9.2.4.2 Advisement and assistance

"The sponsor must ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of the exchange visitor's program." [22 CFR 514.11(b)] The level of assistance required depends in part on the kind of program and the category of the exchange visitor. Students and scholars generally will need, at minimum, documentation for family members and information on maintaining status, extending stay, transferring program, traveling abroad and reentering, securing employment, and departing and returning home. The age of the exchange visitor, the length of stay, the kind of activity, and so on, may demand other advice and assistance as well.

9.2.4.3 Communications with USIA

"The sponsor must conduct the official communications relating to the exchange visitor program with the Agency, the United States Immigration and Naturalization Service, or the United States Department of State. Reference to the sponsor's program number shall be made on any correspondence with the Agency." [22 CFR 514.11(c)] The most frequent communication with these offices is Form IAP-66 and its supporting documents. Other examples of common communications include annual reports, notifications regarding the program, requests for advisory opinions or information, and requests for forms.

9.2.4.4 Custody of Form IAP-66

"The sponsor must act as custodian for the control, issuance, and distribution of Forms IAP-66." [22 CFR 514.11(d)] (See Section 9.2.5 regarding control of the Form IAP-66.)

9.2.5 Control of Form IAP-66

The IAP-66 is a controlled form. Unlike other forms for visa documentation, it cannot be purchased from the United States Government Printing Office. It is a four-color, four-page, automatic carbon (no carbon required) form printed for use only by USIA. It is distributed by USIA to designated exchange visitor programs upon written request. Each Form IAP-66 is serially numbered to discourage misuse, and responsible officers are required to account for each form by number. The numbers identify the program to which each form was issued so that completed forms that are suspect can be traced. USIA may, at its discretion, permit certain exchange visitor programs to print their own forms with the program number and description and other specific information preprinted on the form. It is the responsibility of the responsible officer to maintain adequate control of Form IAP-66 and to ensure that it is used only for authorized purposes and is issued and signed only by a responsible officer. USIA is concerned about the security of Form IAP-66 and has set forth specific instructions to the responsible officer for control of the form. Responsible officers must follow these instructions in the receipt, issuance, storage, and accounting of Forms IAP-66. [22 CFR 514.12]

9.2.5.1 Requests for Forms IAP-66

The sponsor must

> submit written requests to the Agency for a 1-year supply of Forms IAP-66, and allow 4 to 6 weeks for the distribution of these forms. The Agency has the discretion to determine the number of Forms IAP-66 to be sent to a sponsor. The Agency will take into consideration the current size of the program and the projected expansion of the program in the coming 12 months. If requested, the Agency will consult with the responsible officer prior to determining the number of Forms IAP-66 to be sent to the sponsor. Additional forms may be requested later in the year if needed by the sponsor. [22 CFR 514.12(a)]

Some sponsors have reported inordinate delays in receiving Forms IAP-66 or have been asked to justify their request for forms. USIA is attempting to make its mailing for forms as efficient as possible and it needs to be advised of delays. USIA has an interest in and the right to inquire about a sharp increase in the use of forms. A simple statement concerning program expansion, etc. usually suffices for USIA's records. NAFSA and USIA have discussed the regulatorially mandated use increase caused by the notification procedures for (see Section 9.2.5.3, item 8).

9.2.5.2 Verification of exchange visitor eligibility

Prior to issuing Form IAP-66, verify that the exchange visitor:

(1) is eligible, qualified, and accepted for the program in which he or she will be participating;

(2) possesses adequate financial resources to complete his or her program; and

(3) possesses adequate financial resources to support any accompanying dependents. (See Section 9.2.3.4.)

9.2.5.3 Issuance of Form IAP-66

Issue the Form IAP-66 only so as to:

(1) facilitate the entry of a new participant of the exchange visitor program;

(2) extend the stay of an exchange visitor;

(3) facilitate program transfer;

(4) replace a lost or stolen Form IAP-66;

(5) facilitate entry of an exchange visitor's alien spouse or minor unmarried children into the United States separately;

(6) facilitate re-entry of an exchange visitor who is traveling outside the United States during the program;

(7) facilitate a change of category when permitted by the Agency; and

(8) update information when significant changes take place in regard to the exchange visitor's program, such as a substantial change in funding or in the location where the program will take place. [22 CFR 514.12(c)]

The current Form IAP-66 has no provision for indicating that the purpose of the form is to facilitate reentry, change category, or update information (items 6, 7, and 8 above respectively). Until a new form is printed or until USIA publishes its handbook appropriate notations such as "reentry," "category change," or "update" may be typed in the section of the Form IAP-66 labeled "the purpose of this form."

9.2.5.4 Safeguards

> (1) Store Forms IAP-66 securely to prevent unauthorized use.
>
> (2) Prohibit transfer of any blank Form IAP-66 to another sponsor or other person unless authorized in writing (by letter or facsimile) by the Agency to do so.
>
> (3) Notify the Agency promptly by telephone (confirmed promptly in writing) or facsimile of the document number of any completed Form IAP-66 that is presumed lost or stolen or any blank Form IAP-66 lost or stolen. [22 CFR 514.12(d)]

In a large, active program this reporting requires conscientious monitoring of Form IAP-66 disbursement and frequent correspondence with USIA. Especially resource-intensive is the tracking and reporting of

Forms IAP-66 lost in the U.S. and international mails or misplaced by exchange visitors and their families both in the United States and abroad. USIA has confirmed that the immediate reporting requirement applies only for groups of forms that are lost or stolen. Individual losses, such as with the loss or theft of a passport, may be reported by mail only. [NAFSA-USIA Meeting, 30 July 1993]

> (4) Forward the completed Form IAP-66 only to an exchange visitor, either directly or via an employee, officer, or agent of the sponsor, or to an individual designated by the exchange visitor. [22 CFR 514.12(d)]

This ensures that the Form IAP-66 goes as directly as possible from the responsible officer to the participant, thereby reducing the chances of loss or theft and limiting opportunities for interference with the Exchange Visitor Program by outside parties.

9.2.5.5 Accounting

The sponsor must account for every Form IAP-66. This accounting includes maintaining a record, by serial number, of every Form IAP-66 received and/or issued, destroying every damaged or unusable form on the sponsor's premises, and making a record of each such form. In addition, the sponsor must ask exchange visitors and prospective exchange visitors to return any unused forms sent to them, make a record of those forms and destroy them on the sponsor's premises. [22 CFR 514.12(e)]

9.2.6 Notification requirements

The notification requirements refer to occasional, unusual, or exceptional circumstances that affect or may affect the individual exchange visitor program or the encompassing Exchange Visitor Program. These include change of circumstances of the sponsor, serious problems or controversy, or actions or circumstances affecting the status of the exchange visitor. [22 CFR 514.13]

9.2.6.1 Change of circumstances

> The sponsor shall notify the Agency promptly in writing of any of the following circumstances:
>
> (1) Change of its address, telephone, or facsimile number;
>
> (2) Change in the composition of the sponsoring organization which affects its citizenship;
>
> (3) Change of the responsible officer or alternate responsible officer;
>
> (4) A major change of ownership or control of the sponsor's organization;
>
> (5) Change in financial circumstances which may render the sponsor unable to comply with its obligations ...;
>
> (6) Loss of licensure or accreditation;
>
> (7) Loss or theft of Forms IAP-66 ...;
>
> (8) Litigation related to the sponsor's exchange visitor program, when the sponsor is a party; and
>
> (9) Termination of its exchange visitor program. [22 CFR 514.13(a)]

It is not apparent how loss or theft of Forms IAP-66, item 7 above, constitutes a change in circumstances of the sponsor, but the inclusion of this item here is indicative of USIA's exceptional concern over the security of the forms.

9.2.6.2 Serious problem or controversy

"Sponsors shall inform the Agency promptly by telephone (confirmed promptly in writing) or facsimile of any serious problem or controversy which could be expected to bring the Agency or the sponsor's exchange visitor program into notoriety or disrepute." [22 CFR 514.13(b)] Sponsors should exercise caution in interpreting and responding to this requirement. Nowhere are the terms "serious problem," "controversy," "notoriety," or "disrepute" defined. The responsible officer, in consultation with the institution's legal counsel and public relations officer, must determine when a situation needs to be reported. The Exchange Visitor Program Services Office of USIA should provide assistance and support in any situation of such gravity as to necessitate reporting.

9.2.6.3 Program status of exchange visitor

"Sponsors shall notify the Agency in writing when: (1) The exchange visitor has withdrawn from or completed a program thirty (30) or more days prior to the ending date on his or her Form IAP-66; or (2) the exchange visitor has been terminated from his or her program." [22 CFR 514.13(c)

Although not explained in the regulations, item 2 above is meant to apply only to terminations for cause as required by regulations. It does not mean simple scheduled completion of a program.

As written, the regulations require the reporting not only of unusual withdrawals or terminations but also of more common situations. These include instances in which a student completes a degree early or a professor or researcher changes from J-1 to some other visa class, since in both cases the participation in the exchange visitor program may end more than 30 days before the ending date on the Form IAP-66. USIA has clarified that this reporting applies only to program termination or withdrawal, not to early completion. Sponsors may choose to report early completion as well as this relieves the sponsor of any further responsibility for the exchange visitor. [*Federal Register*, 19 March 1993, p. 15184]

9.2.7 Insurance

Implementation of this section of the regulations was delayed until 1 September 1994 [*Federal Register*, 19 March 1993, p. 15184]. Access to adequate health care for exchange visitors and their families is a major concern for USIA and for sponsors. To ensure such access, USIA has made health insurance a requirement for participation in a program. [22 CFR 514.14]

9.2.7.1 Regulatory requirements

Health insurance in the United States is primarily a private industry with a variety of options for coverage and cost. USIA has established minimum requirements for insurance that are designed to protect the exchange visitor and his or her family. Because of the importance and specificity of the new insurance requirement, section 514.22 is reproduced here in its entirety.

> (a) Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program.
>
> Minimum coverage shall provide:
>
> (1) medical benefits of at least $50,000 per accident or illness;
>
> (2) repatriation of remains in the amount of $7,500;
>
> (3) expenses associated with medical evacuation of the exchange visitor to his or her home country in the amount of $10,000; and
>
> (4) a deductible not to exceed $500 per accident or illness.
>
> (b) An insurance policy secured to fulfill the requirements of this section:
>
> (1) may require a waiting period for pre-existing conditions which is reasonable as determined by current industry standards;
>
> (2) may include provision for co-insurance under the terms of which the exchange visitor may be required to pay up to 25 percent of the covered benefits per accident or illness; and
>
> (3) shall not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.
>
> (c) Any policy plan or contract secured to fulfill the above requirements must, at minimum, be:
>
> (1) Underwritten by an insurance corporation having an A.M. Best rating of "A-" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A-" or above, a Standard and Poor's Claims-paying Ability rating of "A" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating service as the Agency may from time to time specify; or
>
> (2) Backed by the full faith and credit of the government of the exchange visitor's home country; or
>
> (3) Part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or
>
> (4) Offered through or underwritten by a federally qualified Health Maintenance Organization (HMO) or eligible Competitive Medical Plan (CMP) as determined by the Health Care Financing Administration of the U.S. Department of Health and Human Services. [Interim Final Rule, *Federal Register*, 7 July 1994, p. 34760]
>
> (d) Federal, state or local government agencies, state colleges and universities, and public community colleges may, if permitted by law, self-insure any or all of the above-required insurance coverage.
>
> (e) At the request of a non-governmental sponsor of an exchange visitor program, and upon a showing that such sponsor has funds readily available and under its control sufficient to meet the requirements of this section, the Agency may permit the sponsor to self-insure or to accept full financial responsibility for such requirements.
>
> (f) The Agency, in its sole discretion, may condition its approval of self-insurance or the acceptance of full financial responsibility by the non-governmental sponsor by requiring such sponsor to secure a payment bond in favor of the Agency guaranteeing the sponsor's obligations hereunder.
>
> (g) An accompanying spouse or dependent of an exchange visitor is required to be covered by insurance in the same amounts [as the principal].
>
> Sponsors shall inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States. [See Section 9.2.3.2.]
>
> (h) An exchange visitor who willfully fails to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who makes a material misrepresentation to the sponsor concerning such coverage shall be deemed to be in violation of these regulations and shall be subject to termination as a participant.
>
> (i) A sponsor shall terminate an exchange visitor's participation in its program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent willfully fails to remain in compliance with insurance requirements. [22 CFR 514.14] (See Sections 9.2.6.3 and 9.3.10.1)

Sponsors who work with general student insurance will notice that some federal requirements, such as coverage for pregnancy, are not required by the Exchange Visitor Program. Sponsors should remember that these are two separate sets of regulations; each applies in its own context.

9.2.7.2 Sponsor obligations

The sponsor is responsible for making the exchange visitor aware of requirements and for terminating the participant from the program if he or she willfully fails to meet those requirements.

The insurance need not be portal-to-portal insurance but must cover the exchange visitor and the family from the beginning of the exchange activity until its completion; portal-to-portal insurance is desirable if available. [*Federal Register*, 19 March 1993, p. 15183]

9.2.7.2.1 Advising the exchange visitor of the requirements. USIA requires that insurance requirements be part of the early correspondence and information provided to the prospective exchange visitor (see Section 9.2.3.2). This information should include the required levels of coverage (see Section 9.2.7.1) and a strong statement regarding termination from the program for failure to maintain insurance. USIA has stated that it is preparing a publication to meet this insurance advising requirement.

9.2.7.2.2 Monitoring compliance. The regulations require sponsors to monitor insurance compliance only in two circumstances. The sponsor must advise the exchange visitor of the insurance requirements in the prearrival and orientation information (see Section 9.2.3.2 and 9.2.3.3.) The sponsor must terminate from the program any exchange visitor who willfully fails to maintain the required insurance (see Section 9.2.7.2.3) No other monitoring is required under the regulations. Because of the legal and ethical issues involved sponsors are strongly encouraged to discuss this matter with appropriate institutional administration and to establish and follow an institutional policy on health insurance compliance and monitoring. (See a further discussion of insurance compliance monitoring in the NAFSA *Newsletter,* Vol. 45, No. 6, April/May 1994.)

Sponsors may, but are not required to, provide mandatory health insurance for participants in its program, thereby ensuring compliance. One difficulty in doing so is the difference between the sponsors' standard insurance and that required by USIA. For example, the sponsor may require health insurance for all students or offer it to all faculty and researchers, but the policy which the sponsor holds for these people may differ in significant ways from USIA requirements. USIA is willing to discuss institutional policies that are different but comparable and to try to reach a reasonable resolution. [*Federal Register,* 19 March 1993, p. 15184] Sponsors who choose to monitor must determine how they will segregate, for the purposes of insurance, their exchange visitor population from others engaged in similar activities and monitor health insurance compliance. Sponsors may permit exchange visitors to provide their own insurance either through a home government national health plan or through a private U.S. or foreign insurance provider that meets the requirements of the regulations. The requirements for U.S. or private insurance are quite strict, while foreign government national health plans require only backing by the full faith and credit of the government. Based on the quality of health care generally provided in the home country and the presumption that the foreign government at best would pay to meet rather than to exceed that level, some foreign government insurance might not provide adequate health care in the United States when judged by U.S. standards. Although such foreign government-based insurance would meet the requirements of the regulations, a sponsor needs to consider these variations in establishing institutional policy regarding health insurance requirements.

Sponsors may, but are not required to, monitor insurance compliance for exchange visitors who obtain their own coverage. Sponsors cannot possibly review and compare foreign government policies, or foreign or U.S. private policies, as doing so requires a level of expertise that is beyond the resources of most sponsors and beyond the review that even USIA is willing to exercise.

When Forms IAP-66 are revised it is hoped that an insurance compliance statement will be part of the certification on the reverse of the white copy. Until that time, sponsors might give each exchange visitor a reminder of the insurance requirement and require a signed statement confirming compliance. Sponsors with the time and resources may choose a more detailed or thorough review and verification.

9.2.7.2.3 Termination from the program for noncompliance.. The sponsor must terminate from the exchange visitor program any participant who willfully fails to maintain the required insurance for himself or herself and all J-2 family members. The characterization of a violation as willful for the purpose of warranting termination provides several advantages. It allows time for fund transfer, registration procedures, payroll procedures, and other administrative delays that might result in inadvertent or unavoidable noncompliance. It also gives the sponsor an opportunity to counsel those who might commit a "first offense" because they do not understand the seriousness of the requirement or the consequence of termination. A participant may have been aware of the requirement and of the consequences but may provide an excuse such as forgetting to mail a premium check or not having sufficient funds when a premium was due. The responsible officer must make a reasoned judgement as to what action would be in the best interest of the program and the individual.

9.2.8 Annual reports

Annual reports were required early in the administration of the Exchange Visitor Program. With the introduction of the multipage Form IAP-66 in 1974, and because of the computerized recording keeping that this form permitted, the Department of State sent a letter to all sponsors in April of that year advising them that the annual report requirement was terminated and that no annual report was to be filed in that year or future years. Despite the clear intention of the Department of State to use the Form IAP-66 for statistical and program monitoring purposes, and over the objections of most sponsors, USIA has reinstituted the annual report requirement. [22 CFR 514.15]

Sponsors are required to make annual reports to USIA as to the status of the program, the sponsor's compliance with regulations in key areas, and the use of Forms IAP-66 for the year. In preparing the annual report sponsors are reminded to compare the regulatory requirements in Section 514.15 with the text on the annual report form in Appendix D and to use the first as a guide to completion of the second. The two, although similar, are not identical in the information they require.

The regulatory language takes precedence over that of the form as the form published with the regulations is exemplary only and is in revision. [Colvin, NAFSA: Association of International Educators national conference 1993]

9.2.8.1 Annual report regulations

Annual reports "shall be filed on an academic or calendar year basis, as directed by the Agency." USIA has confirmed that academic institutions should file on a reporting year of 01 July to 30 June with the report due by 31 July. This schedule is reflected in the redesignation letters received by programs which have been redesignated (see Section 9.1.2.4.1). Academic sponsors whose redesignation letters indicate a different reporting period should verify this with USIA. Annual reports must contain the following:

1. A brief summary of the activities in which exchange visitors were engaged, including an evaluation of program effectiveness;
2. A description of the nature and extent of reciprocity occurring in the sponsor's exchange visitor program during the reporting year;
3. A summary of the cross-cultural activities provided for its exchange visitors during the reporting year;
4. Certification of compliance with insurance coverage requirements;
5. A report of Form IAP-66 usage during the reporting year setting forth the following information:
   (1) the total number of Forms IAP-66 received from the Agency during the reporting year;
   (2) the total number of Forms IAP-66 voided or destroyed by the sponsor during the reporting year and the document numbers of such forms;
   (3) the total number of Forms IAP-66 issued to potential exchange visitors that were returned to the sponsor or not used for entry into the United States; and
   (4) the total number and document identification number sequence of all blank Forms IAP-66 in the possession of the sponsor on the date of the report. (See Section 9.2.5)
6. A numerical count by category of all exchange visitors participating in the sponsor's program for the reporting year.
7. Sponsors may indicate their desire for redesignation ... by marking the appropriate box on their annual report. (See Section 9.1.2.4). [22 CFR 514.15]

9.2.8.2 Annual report form

As noted in Section 9.2.8 above, this form is in revision and should, in its final version, reflect the regulations more closely. The current form is divided into five sections.

9.2.8.2.1 Heading. The heading identifies the program by program number, specifies the reporting period covered in the report, and states the range of Forms IAP-66 covered by the report. Most institutions with several alternate responsible officers, all of whom issue Forms IAP-66, will not be able to provide a single, unbroken range of form numbers. The admissions office may issue initial Forms IAP-66 for incoming students while the international student office issues all subsequent Forms IAP-66. Each office will have its own supply of the forms, and issuance gaps in sequences will occur (see also Section 9.2.8.1). Although one office must maintain accountability for all reports to USIA, one option that USIA has approved is for each office to prepare its own report on Forms IAP-66. These could be given to the responsible officer, who could attach them to the final report.

9.2.8.2.2 Part A, statistical report. This part is divided into two sections, a statistical report of exchange visitor activity by category and a numerical reconciliation by count of Forms IAP-66.

The numerical reconciliation of Forms IAP-66 is required on any annual report filed after 19 March 1993, but it may be difficult to obtain the information before computer and record-keeping systems are changed. Required is the number of forms voided or not used by participants and the number of forms issued for dependents. The separate count of dependent forms is not required by the regulations and may be ignored.

Some questions and issues remain unresolved. Reporting the number of voided forms is straightforward, but comparing forms issued to those as yet unused by exchange visitors is an entirely different matter. There is the obvious difficulty of doing a form-by-form comparison of serial numbers to determine which forms have been used. Data elements will have to be added to computer systems to have any reasonable expectation of accomplishing such a comparison.

Completely unpredictable and uncountable are the "semi-used" forms. For example, a new Form IAP-66 is issued to a current participant to obtain a visa abroad. The exchange visitor presents it and the current pink copy of the Form IAP-66 to the consular officer for that purpose and obtains a visa. The consular officer makes no notation on the Form IAP-66. Upon reentering the United States the exchange visitor presents both forms at the port of entry to the immigration officer who admits the individual without any further notations on either Form IAP-66. Has the Form IAP-66 been used or not? It was presented both to a consular and an immigration officer, and both "processed" it as their regulations required, but no notation was made on the form and no record of its serial number was kept.

Equally troubling is counting the forms issued to dependents. Although an adjustment in computer systems could do this, it is interesting that with the annual report regulations do not require information on which of those forms are unused. The regulations refer to Forms IAP-66 issued to and unused by potential exchange visitors. By definition, dependents are not exchange visitors (see Section 9.1.1.1) and are therefore excluded from the count. Immigration officers at ports of entry frequently do not collect Forms IAP-66 of dependents even though the form is "used" to enter the United States.

Of further interest, the regulations require reporting by serial number, and the report form requires only a numerical count. Until the form is revised to reflect the regulations, sponsors will need to annotate and amend the form if it is to serve as a means of complying with the regulatory language.

Sponsors will need to provide statistical information on categories usage on the annual report. In order to permit a sponsor to make necessary computer and record keeping changes, the numerical count by category was optional for the 1992–93 and 1993–94 years. It will be required of each sponsor for the reporting year beginning with academic year 1995. [*Federal Register*, 19 March 1993, pp. 15184-5] According to the Agency's interpretation of its regulations, the 1995 academic year begins on 1 September 1994. Since the reporting year begins 1 July, for consistency sponsors should begin the count at that time rather than waiting until September.

9.2.8.2.3 Part B, program evaluation. This part of the annual report is a narrative report on a separate page on the operation of the program. Items required in the narrative include program activity, difficulties encountered and their resolution, program transfers, anticipated growth and the proposed new activity, cross-cultural activities, and the reciprocal component of the program. For an active program on a college or university campus the summaries and descriptions of necessity will either be short, broadly worded, and "generic" or of such size and volume as to be unreasonable to prepare and produce. The form refers to a "brief" narrative. It may be useful for a sponsor to prepare general responses to be used each year for the report and to include a few statements on items of special note for that year. One of the items in the narrative is program transfers. This is not part of the regulations, seems to have no meaning in this context, and appears to have been a typographical error in this appendix. It has been brought to the attention of USIA for resolution.

9.2.8.2.4 Certification and signature. By signing the form, the responsible officer confirms that the sponsor has complied with the insurance requirements (see Sections 9.2.3.2, 9.2.7.2, and 9.3.10) and that the information contained in the report is correct.

9.2.8.2.5 Redesignation. Although the annual report regulations state that a program may indicate its request for redesignation on the annual report, the form itself has no provision for that indication. [*Federal Register*, 19 March 1993, p. 15219]

9.2.9 Employment

(a) An exchange visitor may receive compensation from the sponsor or the sponsor's appropriate designee for employment when such activities are part of the exchange visitor's program.

(b) An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her program status and is subject to termination as a participant in an exchange visitor program.

(c) The acceptance of employment by an accompanying spouse or minor child of an exchange visitor is governed by Immigration and Naturalization Service regulations. (See Section 9.16.4.) [22 CFR 514.16]

Applicable parts of INS regulations appear primarily in 8 CFR 274(a). A J-1 exchange visitor is classified as an alien authorized for employment with a specific employer.

An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency as set forth in the Certificate of Eligibility (Form IAP-66) issued by the program sponsor. [8 CFR 274a.12(b)(11)]

As the regulations are written, the responsible officer grants work authorization. Such a grant makes the employment part of the program and therefore authorized. (See sections on each category for further information on employment authorization.) [22 CFR 514.16]

9.2.10 Sanctions

A sponsor that fails to administer its program according to regulations is subject to sanctions, including revocation of its exchange visitor program. Until the most recent changes in the regulations (19 March 1993), USIA did not have the ability to impose sanctions of less severity than suspension or revocation of a program. USIA expanded the sanctions regulations to provide graduated penalties along with due procedural rights. The regulations also provide the Agency the ability to take quick action against a sponsor that might endanger the safety of a participant.

Sanctions may be imposed by USIA if:

- a sponsor willfully or negligently violates one or more of the Exchange Visitor Program regulations;
- USIA witnesses a pattern of willful or negligent failure to comply with one or more of the Exchange Visitor Program regulations;
- a sponsor commits an act of omission or commission which has or could have endangered the health, safety, or welfare of an exchange visitor; or
- the sponsor commits an act which has brought or could bring the Agency into notoriety or disrepute. [22 CFR 514.50(a)] Since USIA does not view all violations as carrying the same weight, the sanctions vary according to the severity of the offense.

9.2.10.1 Lesser sanctions

Lesser sanctions are imposed for minor violations of program administration that do not endanger the health, safety, or welfare of the exchange visitor or bring the program or Agency into disrepute. Examples provided in the preamble to the regulations include: (1) failure to provide the Agency with an annual report; (2) failure to provide the Agency with information it requests, as provided for in the regulations; (3) failure to safeguard Forms IAP-66 in the sponsor's possession; or (4) negligent misrepresentations of the program made in sponsor literature [*Federal Register*, 19 March 1993, p. 15194; 22 CFR 514.50(b)]

Depending on the nature of the violation, any of the following lesser sanctions may be imposed: (1) a written reprimand with a warning that repeated violations may result in the suspension or revocation of the sponsor's program; (2) an Agency-imposed probation for a period determined by the Agency at its discretion; (3) a corrective action plan; or (4) a limitation or reduction in the number of participants authorized to participate in the program. [22 CFR 514.50(b)]

Lesser sanctions are not appealable by the sponsor if the proposed limitation in program size (1) is less than 10 percent of the number of exchange visitors during the previous calendar year or (2) will not impose a significant financial burden on the sponsor. [22 CFR 514.50(b)(2)] However, within 10 days of any lesser sanctions being imposed, the sponsor may make a written statement to the office of Exchange Visitor Program Services along with supporting evidence mitigating the Agency's sanction. The sponsor also may request that a conference be held. The Agency will review the case and at its discretion may withdraw or lessen the sanction.

9.2.10.2 Suspension or significant program limitation

Should the Agency find that a suspension or program limitation in excess of 10 percent is warranted, the Exchange Visitor Program Services office is required to provide written notice to the sponsor stating the reasons and the effective date. This date may not commence less than 30 days after the date of the notice.

Within the 30-day period, the sponsor may submit an objection to the Exchange Visitor Program Services office along with supporting documentation that the sponsor is in compliance with the regulations. The Exchange Visitor Program Services office must review the objection and notify the sponsor in writing of the decision within 7 days.

Within 10 days of receipt of a decision by the Agency to impose such sanctions, the sponsor may make an appeal to the Exchange Visitor Program Designation, Suspension, and Revocation Board. The composition of the board is set forth in Section 9.2.10.6. The appeal is filed with the Agency's General Counsel, Room 700, 301 4th Street, SW, Washington, DC 20547. The sanctions are stayed during the pendency of an appeal.

The general counsel has 10 days to convene the board. The board must schedule a hearing within 10 days, at which time the interested parties are invited to present their case. Upon conclusion of the hearing, the board has 10 days to issue a written decision. If the board decides to suspend a program, notification will be made to the Exchange Visitor Program Services office, the sponsor, the INS, and the Bureau of Consular Affairs at the Department of State. A suspension takes effect as of the date of the board's decision. [22 CFR 514.50(c)]

9.2.10.3 Summary suspension

The office of Exchange Visitor Program Services may impose a summary suspension if it finds that a sponsor has committed an act of negligence which could endanger the health, safety, or welfare of an exchange visitor. The summary suspension affords USIA the opportunity to take quick action against a sponsor in situations where delayed sanctions might harm the exchange visitor. The Agency intends to use a summary suspension only in the most serious cases when the health, safety, or welfare of the participant is in immediate danger.

USIA must notify the sponsor in writing of its intent to impose a summary suspension, not to exceed 60 days. The grounds for imposing the sanction must be clearly stated. The sponsor has 3 days to submit a written objection to the proposed sanction, along with supporting documentation.

The Exchange Visitor Program Services office must review the objection and notify the sponsor in writing of the decision within 3 days. Should the Agency decide to impose a summary suspension, the sponsor has 10 days following the receipt of a decision to make an appeal to the Exchange Visitor Program Designation, Suspension, and Revocation Board. The appeal is filed with the Agency's General Counsel, Room 700, 301 4th Street, SW, Washington, DC 20547. The summary suspension, is *not* stayed during the pendency of an appeal.

The general counsel has 10 days to convene the board. The board must schedule a hearing within 10 days, at which time the interested parties are invited to present their cases. Upon conclusion of the hearing, the board has 10 days to issue a written decision. If the board affirms the decision of the Exchange Visitor Program Services office, notification will be made to the Exchange Visitor Program Services office, the sponsor, the INS, and the Bureau of Consular Affairs at the Department of State. [22 CFR 514.50(d)]

9.2.10.4 Revocation

USIA will initiate revocation procedures when a sponsor repeatedly violates the program or when the continuation of the designation is not in the interest of the Exchange Visitor Program. The office of Exchange Visitor Program Services may revoke a sponsor's program designation even if lesser sanctions, a suspension, or a summary suspension have not been imposed previously. The Agency must give the sponsor no less than 30 days notice of its intent to revoke the program designation, and must state the grounds.

The sponsor has 10 days to submit a written objection to the proposed sanction, along with supporting documentation. The Exchange Visitor Program Services office must review the objection and notify the sponsor in writing of the decision. Should the Agency decide to revoke the sponsor's designation, the sponsor has 20 days from the receipt of the decision to make an appeal to the Exchange Visitor Program Designation, Suspension, and Revocation Board. The appeal is filed with the Agency's General Counsel, Room 700, 301 4th Street, SW, Washington, DC 20547. The revocation is stayed during the pendency of an appeal.

The general counsel has 10 days to convene the board. The board must schedule a hearing within 10 days, at which time the interested parties are invited to present their case. Upon conclusion of the hearing, the board has 10 days to issue a written decision. If the board decides to revoke a program, notification will be made to the Exchange Visitor Program Services office, the sponsor, the Immigration and Naturalization Service, and the Bureau of Consular Affairs at the Department of State. A revocation takes effect as of the date of the board's decision. [22 CFR 514.50(e)]

9.2.10.5 Sanctions against the responsible officer or alternate responsible officer and denial of a request for redesignation

The Agency, at its discretion, may direct a sponsor to suspend, summarily suspend, or revoke the appointment of a responsible officer or alternate responsible officer. If the Agency intends to "suspend" the appointment of a responsible officer or alternate responsible officer, procedures outlined for "suspensions" are followed (see Section 9.2.10.2). If the Agency takes action to suspend summarily or revoke the appointment of a responsible officer or alternate responsible officer, the respective procedures for these two sanctions are followed (see Sections 9.2.10.3 and 9.2.10.4). [22 CFR 514.50(f)]

Should the Agency deny a sponsor's request for redesignation, the office of Exchange Visitor Program Services must notify the sponsor within 30 days of its intent to deny the request. The grounds for denial must be stated. The sponsor has 10 days to submit a written objection to denial, providing evidence why the redesignation should be granted. The Exchange Visitor Program Services office must review the objection and notify the sponsor in writing of the decision. Should the office affirm its decision to deny the sponsor's request for redesignation, the sponsor has 20 days from receipt of the decision to make an appeal to the Exchange Visitor Program Designation, Suspension, and Revocation Board. The appeal is filed with the Agency's General Counsel, Room 700, 301 4th Street, SW, Washington, DC 20547. A denial of redesignation is stayed pending the decision of the board. [22 CFR 514.50(g)]

The general counsel has 10 days to convene the board. The board must schedule a hearing within 10 days, at which time the interested parties are invited to present their case. Upon conclusion of the hearing, the board has 10 days to issue a written decision. If the board decides to affirm the denial, notification will be made to the Exchange Visitor Program Services office, the sponsor, the INS, and the Bureau of Consular Affairs at the Department of State. A denial of designation takes effect as of the date of the board's decision.

9.2.10.6 Exchange Visitor Program Designation, Suspension, and Revocation Board

The board is made up of (1) the Deputy Associate Director of the Agency's Bureau of Educational and Cultural Affairs, who acts as the presiding officer; (2) the Deputy Director of the Agency office with jurisdiction over the relevant geographical area; and (3) a member of the public appointed by the Deputy Associate Director of the Agency's Bureau of Educational and Cultural Affairs. A new member of the public is appointed for each case before the board. An attorney from USIA's office of the general counsel is assigned to prosecute each case.

Should the board be convened by the general counsel, the board must schedule a hearing within 10 days, at which time the interested parties are invited to present their cases. Upon conclusion of the hearing, the board has 10 days to issue a written decision. If the board decides to affirm the decision of the office of Exchange Visitor Program Services, notification will be made to the Exchange Visitor Program Services office, the sponsor, the INS and the Bureau of Consular Affairs at the Department of State. A decision by the board takes effect on the date issued. [22 CFR 514.50(h) and (j)]

9.2.10.7 Effect of suspension, summary suspension, revocation, or denial of redesignation on current program

If a suspension, summary suspension, revocation, or denial of redesignation is issued against a sponsor, the sponsor must cease issuance of Form IAP-66 and all other activities to promote the program. The sponsor also is prohibited from executing Form IAP-66 for the purposes of entry to the United States. Forms IAP-66 issued to exchange visitors prior to the imposition of a sanction are not affected by the sanction. [22 CFR 514.50(k)]

9.3 SPECIFIC PROGRAM PROCEDURES

Certain procedures apply, in general, to all programs and all categories of program participants. These include but are not limited to:

- selecting participants;
- issuing Form IAP-66 for initial entry, extension of program, transfer of program, and use by family members for entry and reentry;
- change of category, extension of program beyond the standard for the category, or other exceptional circumstances;
- provision of information on the home country physical presence requirement; and

- assisting dependents' application for work authorization. (See sections on individual categories for further details.)

9.3.1 Selection of participants, general requirements

The sponsor must evaluate the qualifications of prospective exchange visitors in relation to the kinds of activities the sponsor is authorized to provide and the eligibility of the individual for participation in the exchange program, and must select applicants accordingly (see Section 9.2.3).

9.3.2 Completion and issuance of Form IAP-66

When the program sponsor has determined that an alien should be issued documents as an exchange visitor, the responsible officer prepares Form IAP-66 and forwards it directly (see Sections 9.2.5 and 9.3.2.3) to the alien with instructions for applying for a J-1 visa and/or obtaining and maintaining exchange visitor status. Form IAP-66 identifies the participant and the sponsor, specifies the nature of the program for which the exchange visitor is coming to the United States, states the inclusive dates of the program sponsorship up to the maximum limitation of stay as specified in the regulations (see Sections 9.5 through 9.11), and indicates the source and amount of financing for the exchange visitor's stay in the United States. At the time of processing by the consular officer or immigration officer, a preliminary determination is made as to whether the exchange visitor is subject to the 2-year home country physical presence requirement (see Section 9.14). This determination is relevant only if the sponsor is providing funding; this item on the Form IAP-66 is left blank if all funding is from other sources."

9.3.2.1 Completion of Form IAP-66

The responsible officer should complete Form IAP-66 according to the detailed instructions provided in the USIA publication, "Codes for Educational and Cultural Exchange." This publication is issued automatically to each program sponsor; additional copies are available to responsible officers from the Exchange Visitor Program Services Office of USIA.

The information required on Form IAP-66 issued to a prospective exchange visitor includes the participant's name, sex, date of birth, place of birth, country of citizenship, country of last legal permanent residence, position in home country, and prospective address in the United States; the purpose of the form (see Section 9.2.5.3); the program sponsor's name, program number, and program description; the inclusive dates of sponsorship up to the maximum permitted for each category of exchange visitor; the participant's exchange visitor category and specific educational field or activity to be engaged in; the source(s) and amount(s) of financial support; and the signature, title, and address of the responsible officer. The inclusion of a space for the telephone number of the responsible officer may appear on a future version of Form IAP-66; the responsible officer may include the telephone number on the current version of the form in the sponsor address section. Some of the information required for completing Form IAP-66 is not normally required by institutions in processing applications for admission as students or for appointment as visiting scholars, so care must be exercised to obtain all of the needed information in a timely manner.

If funding is provided by the exchange visitor program sponsor, item 5 of the IAP-66 requires the program sponsor to state whether the sponsor has received funding for international exchange from one or more U.S. government agencies. (This item is left blank if all funding is from other sources.) The "has" block should be checked only if government funding has been received by the sponsor specifically for the purpose of international educational exchange, either for the exchange visitor for whom the IAP-66 is issued or for the specific program in which the exchange visitor participates (see Section 9.14.1.1). General institutional support, such as a grant to the institution or to one of its departments or professors, which is not specifically designated for an international educational exchange program, should not be considered to be government financing of the individual. If the "has" block is checked, the exchange visitor will be subject to the 2-year home country physical presence requirement (see Section 9.14).

Each item on Form IAP-66 must be completed with care. Failure to complete each section can cause delays in the issuance of visas. If any information for the form is unavailable and there is inadequate time to obtain it, the responsible officer should attach an explanation to the form so the consular officer can be made aware of the circumstances.

Special attention should be given to the participant's country of last legal permanent residence, position in the home country, specific field of study or activity in the United States, and source of financial support, as these items will be factors in determining whether the exchange visitor will be subject to the 2-year home country physical presence requirement.

Accurate information and coding is necessary to enable USIA to maintain current data about the Exchange Visitor Program in general. This information is used, among other things, as the basis for revisions of regulations and procedures. It is therefore in the best interests of all concerned to provide accurate and precise information on Form IAP-66.

9.3.2.2 Financial verification

Verification of funding is specifically required by the regulations. The responsible officer must verify, to his or her own satisfaction and by whatever means considered appropriate, that the prospective exchange visitor has financial resources adequate to provide for all expenses in the United States. These expenses include tuition, fees, related expenses if applicable, living expenses, and insurance coverage for the exchange visitor and all sponsored dependents. Failure to verify financial eligibility can result in great difficulties for the exchange visitor and embarrassment for the program sponsor. Consular officers who issue visas have the authority to question financial support, but those officers, the Department of State, USIA, and INS depend to a great extent upon program sponsors in such matters. [22 CFR 514.12(b)(2) and (3)]

Sponsors must determine the minimum funding required for the exchange visitor and family based on cost of living for the area and tuition, fees, or other expenses likely to be encountered. Educational institutions have experience doing these determinations for students. Some institutions may use the student level as a basis for scholars and other exchange visitors. If a single base line is used, scholars and other nonstudents should be notified of the "frugal student" nature of the funding and advised of the possible effect on living standards.

9.3.2.3 Delivery of Form IAP-66

The regulations require that the responsible officer "forward the completed Form IAP-66 only to an exchange visitor, either directly or via an employee, officer, or agent of the sponsor, or to an individual designated by the exchange visitor." (See Section 9.2.5.4) Controlling the delivery of the form provides more important advantages. It reduces the number of people who handle the form in transit, thus reducing chances of loss or theft. It ensures that the exchange is an agreement and activity among the Exchange Visitor Program, the individual exchange visitor program, the exchange visitor, and the funding agency, if any. It eliminates or limits the involvement in institutional or U.S. foreign policy agendas of entities that might request or require preapproval of exchange visitor participants or their activities.

The responsible officer should forward the first three copies (white, yellow, and pink) of completed Form IAP-66 to the prospective exchange visitor with instructions for applying for a J-1 visa and/or entering the United States in exchange visitor status. The responsible officer retains the fourth (green) copy of Form IAP-66 for the program sponsor's file.

(See Sections 9.3.5, 9.3.8, and 9.3.9 for use of the Form IAP-66 for extensions, transfers, and changes of category.) [22 CFR 514.12(d)(4)]

9.3.2.4 Correcting errors on Form IAP-66

While care should be taken to put accurate information on the Form IAP-66, errors or unexpected changes sometimes occur. Examples include last-minute funding changes or errors in citizenship or residence country. These errors should be corrected as soon as they are discovered by issuing an updated Form IAP-66 and sending it to USIA.

9.3.3 Prearrival information

Each exchange visitor must receive prearrival information to help him or her prepare for travel to and life and work in the United States (see Section 9.2.3.2).

9.3.4 Orientation and cross-cultural opportunities

The sponsor must provide each exchange visitor with the opportunity for orientation and cross-cultural activities to meet regulatory requirements. Dependents who will be in the United States for longer than a year should be offered appropriate orientation as well (see Section 9.2.3.3).

9.3.5 Duration of status and extension of program

When an exchange visitor is admitted to the United States, he or she is issued Form I-94 (Arrival/Departure Record), marked "D/S" for "duration of status." Section 6 of Form IAP-66 is also annotated "D/S." Exchange visitors may remain in the United States as long as they maintain J-1 status up until the ending date on the IAP-66 plus 30 days (see Section 9.12). The D/S notation means that INS considers exchange visitors to be in status as long as their Forms IAP-66 are valid and they engage only in activities permitted by the Form IAP-66. They may file for extension of stay, if that is necessary for the accomplishment of program objectives. (See Section 9.3.5.2 for D/S transition/conversion procedures.)

9.3.5.1 Limitations of stay

The length of time an individual may remain in the United States in exchange visitor status is determined by the general limitations for the category (see Sections 9.5 through 9.11) and the length of time needed to complete the exchange objective. These limitations apply to the total length of stay as an exchange visitor. INS allows exchange visitors an additional grace period of 30 days to prepare for departure from the United States. It is important to make the exchange visitor aware that the exchange activity and any related employment are permitted only until the ending date on the Form IAP-66. The additional 30 days is a status very much like that of a tourist in that one may remain and travel in the United States, but may not undertake activities usually impermissible to tourists. The individual is still considered to be in "J" status for purposes of extension of stay and change of status. Because the 30-day grace period is not reflected on any of the exchange visitor's documents, it should be stated clearly in information provided to the exchange visitor.

An exchange visitor who transfers from one program sponsor to another cannot use that transfer to prolong his or her stay in the United States beyond the limitations of the pertinent category, but he or she will be subject to the time limitations for the specific category. An exchange visitor must have special permission from USIA to change from one category to another and may not do so if it is apparent that the reason for the attempted change of category is principally to delay departure from the United States (see Section 9.3.9). (See Section 9.3.5.2 for D/S transition/conversion procedures.)

9.3.5.2 Extension procedures (including transition/conversion to D/S)

During the transition from the old regulations to the new regulations certain special procedures apply.

> Because there is no automatic conversion to D/S for J participants who are already in the United States, a request for extension to D/S may be filed with the Service on From I-539 with fee at least 15 but not more than 60 days before the expiration of the currently authorized stay. It is anticipated that all J exchange visitors will have D/S within 3 years (or will have departed the country without requiring an extension). [INS Cable CO 214j-P, 9 July 1993]

J-1 exchange visitors with J-2 dependents need special attention during the transition since family members often travel separately. As a result those who travel outside the U.S. and return will be given D/S, while those not traveling may continue to hold Forms I-94 with ending dates. Responsible officers should be aware of this and ensure that appropriate and timely conversions to D/S are processed.

The extension procedures below apply only to individuals who have had their Forms I-94 marked D/S at initial entry (see Section 9.3.5) or who have converted to D/S as described in the preceding paragraph. If an extension of stay for an exchange visitor is warranted, the responsible officer prepares Form IAP-66, indicating the purpose in the box in the upper right corner of the form. The exchange visitor completes and signs the back of the first (white) copy of Form IAP-66 and signs the back of the third (pink) copy. The responsible officer then sends the yellow copy of the IAP-66 to the USIA processing center, thereby notifying USIA of the extension. The pink copy is returned to the exchange visitor and the white and green copies are retained in the sponsor's file. Formerly Section 6 of Form IAP-66 was stamped or notated by INS. The Department of State and INS advised the field that INS no longer makes such notations except upon initial entry. However, it will take some time before all officers are accustomed to this blank space. As a way to avoid inevitable confusion and difficulty for the exchange visitor, sponsors may wish to provide a letter of explanation for exchange visitors to carry with their documents during this transition period.

The exchange visitor's passport must be kept valid while he or she is in the United States. If the passport is not valid, the exchange visitor should be instructed to contact the consulate of his or her country having jurisdiction over the place of study or activity and apply for extension as directed. The exchange visitor should be advised to keep Form I-94 and the pink copy of Form IAP-66 with his or her passport. One exception: When the Forms IAP-66 and I-94 are sent with the passport for passport renewal, the home country embassy or consulate sometimes fails to return these documents.

9.3.5.3 Request for extension of stay beyond standard limits

If an exchange visitor must have an extension of stay beyond the time limitations for the category in order to complete the program for which he or she was admitted to the United States, the program sponsor must submit to USIA a written request in accordance with the regulations for the specific category. Only after USIA has approved the extension may Form IAP-66 be issued and sent to the USIA processing center as a notification. Ordinarily such extensions are granted only for completion of the original objectives of the exchange visitor, not for a new objective or purpose, and never for the convenience of the program sponsor.

9.3.6 Maintenance of status

All exchange visitors must maintain J-1 status by engaging only in activities permitted under the program and the category, filing timely and appropriate transfer and extension notification, refraining from unauthorized employment, and maintaining required health insurance coverage. Each category may have additional specific requirements.

Access to many immigration and exchange visitor benefits depends upon maintaining status. An individual who violates or falls out of status loses eligibility for extension, transfer, employment, change of status and so on. A student who drops out of school or fails to carry a full course of study (see Section 9.5.3) or a researcher whose research is terminated but who remains in the U.S. (see Section 9.3.10) has violated status. Both are deportable and ineligible for further benefits. Unlike the F-1, the J-1 has no provision for reinstatement and USIA has expressed opposition to any such provision (Colvin, NAFSA National Conference 1994, Miami Beach, FL). Interestingly, INS has a general provision for *nunc pro tunc* ("now for then" or retroactive) adjudications at the discretion of the adjudicating officer. A *nunc pro tunc* adjudication might provide relief for some exchange visitors or their families under some circumstances. A *nunc pro tunc* adjudication would not necessarily erase or make legal any unlawful employment undertaken during the out of status period.

9.3.7 Employment authorization

The responsible officer may grant employment authorization based on the exchange visitor's category, program objective, and other pertinent factors (see Section 9.2.9 and employment authorization discussions for each category).

9.3.8 Transfer of program

An exchange visitor in any category may transfer from one program sponsor to another if the purpose of the transfer is to complete the objective for which he or she was admitted to exchange visitor status and if the exchange visitor remains within the same category. The transfer is accomplished through correspondence between the two responsible officers and notification to USIA.

The responsible officer of the program to which the exchange visitor is transferring:

(1) Shall verify the exchange visitor's visa status and program eligibility;" [INS maintains that the term "visa status" is a misnomer and that "nonimmigrant" status or class is the proper term.]

(2) Execute the form IAP-66; and

(3) Secure the written release of the current sponsor.

Upon return of the completed Form IAP-66, the responsible officer of the program to which the exchange visitor has transferred shall provide:

(1) The exchange visitor his or her copy of the Form IAP-66; and

(2) A notification copy (yellow) of such form to the Agency. [22 CFR 514.42]

The responsible officer retains the first (white) and the fourth (green) copies in the file.

The responsible officer of the current program should sign the transfer section of the Form IAP-66 only if he or she agrees that the transfer is for the purpose of completing the original objective and is consistent with the goals of the exchange visitor program. There is no provision for transfer absent the signed release from the previous sponsor. Certain programs, especially those sponsored by government or certain nonprofit agencies, have a direct program interest in limiting the stay of exchange visitors under their sponsorship and may be unwilling to sign the release. Their programs are designated and used for specific kinds of activities and to meet broad program-related exchange goals under agreements with other government or funding agencies. When their participants fail to complete their programs and return home, the overall operation of that particular exchange visitor program may be affected. Due to a difference in operating procedures among USIA, the Department of State, and INS, this control of transfer by withholding transfer release is only effective if the exchange visitor is remaining in the United States.

If the exchange visitor is leaving the United States temporarily between sponsors, the transfer procedures do not apply. It is not necessary to obtain the endorsement of the previous sponsor or submit a notification of program transfer to USIA. Instead, the exchange visitor, if otherwise eligible for entry, may use Form IAP-66 provided by the new sponsor to reenter the United States and is then officially under the sponsorship of the new program. (See Section 9.13.) The previous sponsor and the USIA may object to what some consider a loophole in and subversion of the regulations. However, USIA, the Department of State, and INS so far have not agreed on regulations or procedures to deal with this situation.

Such a reentry and transfer to new sponsorship should not be construed as the beginning of a new program of activity with an accompanying new allotment of time. The exchange visitor is subject to the limitations of time for the total stay as specified for that particular category. See also Section 9.3.15.

9.3.9 Change of category

When a Form IAP-66 is prepared for an exchange visitor, a particular category of activity is indicated on the form. This designation of a category helps to establish and define a program objective. For example, the student category indicates a formal program of study leading to a degree, certificate, or other similar educational objective while the research scholar category indicates the objective of academic research. In general, a change of category represents a change of objective and is not permitted. One may request an exception to this policy.

(a) The Agency may, at its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.

(b) A request for change of category along with supporting justification must be submitted to the Agency by the participant's sponsor. Upon Agency approval the sponsor shall issue to the exchange visitor a duly executed Form IAP-66 reflecting such change of category and provide a notification copy of such form to the Agency.

(c) Requests for change of category from research scholar to student will be evaluated recognizing the fact that, in some cases, research skills can be substantially enhanced by doctoral study.

(d) An exchange visitor who applies for a change of category pursuant to these regulations is considered to be maintaining lawful status during the pendency of the application.

(e) An exchange visitor who applies for a change of category and who subsequently receives notice from the Agency that the request has been denied is considered to be maintaining lawful status for an additional period of 30 days from the day of such notice, during which time the exchange visitor is expected to depart the country, or for a period of 30 days from expiration of the exchange visitor's Form IAP-66, whichever is later. [22 CFR 514.41]

In preparing a request for change of category, a responsible officer should provide sufficient documentation of the reasons for the change to permit USIA to reach an informed decision. This documentation may include but is not limited to supporting letters from faculty advisers, funding agencies, or the home government supporting the change; an explanation of how the current and intended activities are related to and complement each other; and a statement from the exchange visitor explaining his or her objectives and confirming his or her intention to return home at the end of the exchange visitor program.

Sponsors should note that although the preamble to the March 1993 regulations and the regulations themselves indicate a recognition of the availability of the change of category in some situations (see *Federal Register*, 19 March 1993, pp. 15186, 15193), the experience of the exchange community has been that, in practice, the attitude of USIA toward category changes remains restrictive.

A situation exists similar to the one described in Section 9.3.15 for persons who terminate from a program, exit the U.S., remain outside for a period of time, and return on a new program. The category of the new program need not be the same as for the old program. The same cautions apply regarding appropriate use of the exchange program and the visa and reentry denial risks involved in exit and reentry. [22 CFR 514.41]

9.3.10 Termination of program

Exchange visitors who fail to meet the requirements of the program or who engage in unauthorized employment are subject to termination from the program. If terminated, the exchange visitor may become out of status and deportable and must then depart the United States. A person who is out of status is ineligible for change of status, extension of stay, or other benefits. The responsible officer effects a termination by notifying the Exchange Visitor Program Services Office of USIA in writing. USIA effects a termination by notifying the sponsor.

Sponsors may also find it necessary to terminate exchange visitor status for institutional reasons such as loss of grant funding or the departure of the relevant faculty adviser. Of course, sponsors should provide the exchange visitor with as much advance notice as possible and assist with program transfers or other alternatives as appropriate. [22 CFR 514.40] (See Section 9.3.5.)

9.3.10.1 Failure to meet program requirements

> A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor
>
> (1) fails to pursue the activities for which he or she was admitted to the United States;
>
> (2) is unable to continue unless otherwise exempted pursuant to these regulations;
>
> (3) violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program if, in the sponsor's opinion, termination is warranted;
>
> (4) willfully fails to maintain the insurance coverage required under Section 514.14 of these regulations. [22 CFR 514.40(a)]

Conditions which indicate the need to terminate an exchange visitor frequently will warrant pretermination counseling. While not addressed specifically in the termination regulations, such counseling is implied as part of the sponsor's responsibility to monitor the welfare of the exchange visitor (see Section 9.2.3.5). "Willful" failure to maintain insurance coverage indicates prior advice to and discussions with the exchange visitor regarding those requirements (see Section 9.2.7.2.3).

9.3.10.2 Unauthorized employment

An exchange visitor's participation in the Exchange Visitor Program is subject to termination when he or she engages in unauthorized employment. Upon establishing such violation, the Agency shall terminate the exchange visitor's participation in the Exchange Visitor Program. (See Section 9.2.9.)

It is the responsibility of USIA, not the sponsor or responsible officer, to determine when unauthorized work has occurred and to terminate the exchange visitor's program. By assuming this responsibility, USIA recognizes that it is practically impossible and legally inadvisable for the sponsor to monitor the nonprogram activities of its exchange visitor participants. USIA further recognizes that such monitoring undermines the counseling relationship between the responsible officer and the exchange visitor and impedes the former's ability to provide appropriate support and advice to the latter. [22 CFR 514.40(b)]

9.3.10.3 Action by the former exchange visitor

Upon termination from a program the individual has 30 days from the effective date of termination to depart the United States and surrender Form I-94 confirming departure. The individual is considered to be in status during that 30-day period and may, if qualified, apply to change to another nonimmigrant status.

9.3.11 Reports of unusual or exceptional circumstances

The responsible officer should report to USIA any circumstances which might affect the health, safety, or welfare of an exchange visitor or his or her family or which may bring USIA into notoriety or disrepute. The responsible officer must judge whether a particular situation or incident warrants report. (See Sections 9.2.3.5 and 9.2.6.)

9.3.12 Information on the 2-year home country physical presence requirement

The sponsor must advise exchange visitors of the existence and applicability of the 2-year home country physical presence requirement as part of the required prearrival information (see Section 9.2.3.2). Exchange visitors may request sponsor assistance in obtaining advisory opinions from USIA on the applicability of the home country physical presence requirement in certain cases. The responsible officer, as the official liaison among the sponsor, the exchange visitor, and the Exchange Visitor Program, is often best equipped to provide such assistance. The sponsor or responsible officer may, but is not required to, provide information, forms, and assistance in requesting waivers of the home country physical presence requirement (see Section 9.14).

9.3.13 Documents and assistance provided to J-2 dependents

The sponsor must provide assistance to the dependents of exchange visitors to allow them to accompany or join the exchange visitor, travel abroad and reenter the United States, and obtain extension of stay. Such assistance is predicated upon the dependents having adequate financial support and health insurance and qualifying as dependents of the exchange visitor as required by regulations. While not common in most programs, some sponsors, because of program considerations, do not permit exchange visitors to bring dependents. It is one of the prerogatives of the sponsor to make this a condition of sponsorship.

The sponsor also may provide assistance to the J-2 dependents in applying for work authorization and other benefits for which they may qualify. (See Section 9.16.)

9.3.14 Working with other exchange visitor program sponsors

Most exchange visitor program sponsors must, to a greater or lesser degree, work with other exchange visitor program sponsors. This is especially true of educational institutions and some training programs. Where the student or trainee is on site at the campus or training location and the sponsor is located elsewhere difficulties sometimes arise concerning timely issuance of Forms IAP-66 and coordination of extensions, transfers, work authorization, and so on. Misunderstandings among all parties as to the purpose of the exchange and the limitations, if any, on the exchange visitor's activities may create further complications. This is especially true when working with some U.S. government sponsors which are, in turn, working with foreign governments. Sponsors are encouraged to work directly with each other to determine the exact nature of the difficulties and to find solutions. If necessary, USIA "will be pleased to meet with sister agencies to assist with persistent program problems which need to be resolved." [USIA reply to NAFSA letter of 10 February 1994]

9.3.15 Returning to the United States to begin a new program

If an exchange visitor is absent from the United States for a significant period of time, he or she may reenter the country under new sponsorship for a new program of activity, and the time limitations would apply only to that new program of activity. One could argue that an absence of a semester, quarter, or term of 3 to 4 months breaks the continuity of, and therefore ends, a program. Depending on circumstances absences of less time may also constitute the end of a program. Regulations do not specify the period of time the exchange visitor must be absent from the United States before reentering to begin a new program. A consular officer may deny a J-visa to an individual who has been in the United States for an extended period in J-1 status and is applying for a new visa to return on a new program. Any exchange visitor planning to travel abroad and reenter under these circumstances should be advised of the risk of visa denial at the post abroad or the denial of admission at the port of entry. (See Section 9.2.3.4.1.)

9.4 EXCHANGE VISITOR CATEGORIES

Programs are designated to sponsor certain categories of exchange visitors. Each category permits certain kinds of activities and has its own eligibility and maintenance of status requirements, limitations of stay, and employment options. The categories, in the order in which they appear in the regulations, are professors, research scholars, short-term scholars, trainees, college and university students, teachers, secondary school students, specialists, international visitors, government visitors, camp counselors, and summer travel/work participants. For a fuller description of those categories most relevant to educational institutions, see Sections 9.5 through 9.10.

9.5 COLLEGE AND UNIVERSITY STUDENTS

9.5.1 Definitions

Students must be admitted to a degree program at an "accredited educational institution" for a "full course of study" or be engaged full time in a nondegree "prescribed course of study." By definition students may be enrolled in degree programs, English language training, and other nondegree study preparatory to entrance into a degree program or some other nondegree program with a predetermined educational objective. [22 CFR 514.2]

9.5.1.1 Student

A college or university student is defined as an individual who is:

(1) studying in the United States: ...

(ii) pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or engaged full-time in a prescribed course of study of up to 24 months duration conducted by:

(A) a post-secondary accredited educational institution [see Section 9.1.1.3]; or

(B) an institute approved by or acceptable to the post-secondary accredited educational institution where the student is to be enrolled upon completion of the non-degree program;

(2) engaged in academic training as permitted ...; or

(3) engaged in English language training at:

(i) a post-secondary accredited educational institution, or

(ii) an institute approved by or acceptable to the post-secondary accredited educational institution where the college or university student is to be enrolled upon completion of the language training. [22 CFR 514.4(a)]

9.5.1.2 Full course of study

"Full course of study means enrollment in an academic program of classroom participation and study, and/or doctoral thesis research at an accredited educational institution.... College and university students shall register for and complete a full course of study as defined by the accredited educational institution in which the student is registered, unless exempted" in accordance with regulations (see Section 9.5.3). [22 CFR 514.2]

9.5.1.3 Prescribed course of study

"Prescribed course of study means a nondegree academic program with a specific educational objective. Such course of study may include intensive English language training, classroom instruction, research projects, and/or academic training" to the extent permitted by regulations (see Sections 9.5.3 and 9.5.4). [22 CFR 514.2]

9.5.2 Selection criteria

Students may be sponsored as exchange visitors only if the sponsor ensures that they have academic credentials sufficient for admission, are in fact admitted [22 CFR 514.23(d)], and will be funded or involved in an exchange in a way acceptable to the Agency. The 1993 regulations included funding and exchange criteria that had previously been recommended but not required. Significant in these criteria is exclusion from exchange visitor eligibility of any student who is completely self-funded, unless the student is participating in an exchange agreement as described below.

> Students are eligible for the Exchange Visitor Program only if at any time during their college studies in the United States:
>
> (1) they or their program are financed directly or indirectly by the United States government, the government of the student's home country, or an international organization of which the United States is a member by treaty or statute;
>
> (2) the programs are carried out pursuant to an agreement between the United States government and a foreign government;
>
> (3) the programs are carried out pursuant to a written agreement between American and foreign educational institutions, between American education institution and a foreign government, or between a state or local government in the United States and a foreign government; or
>
> (4) the exchange visitors are supported substantially by funding from any source other than personal or family funds. [22 CFR 514.23(c)]

In criterion three above, USIA has appropriately declined to specify the parameters of these agreements. This permits the institution to accommodate some situations which might otherwise exclude a student from J-1 sponsorship. A common example is the self-funded doctoral student at a foreign university who undertakes part of the doctoral research at a U.S. institution. The advising professor at the foreign school and the U.S. school have a written agreement as to the student's research at the U.S. school and the applicability of that research to the requirements at the home school. Another example is the self-funded student who has government connections in the home country. A representative of the foreign government might write to the U.S. institution expressing an interest in the student's future and confirming that certain fields of study would prepare the student for government service after graduation. The school might agree to admit the student to a particular department or field of study. Both of these arrangements fall within the regulatory language.

In criterion 4 above, "substantial" may be interpreted to mean significant or important funding, rather than primary or major source or amount. Sources of funding may include scholarships, fellowships, assistantships, tuition waivers, and similar support from the school. For example, a full tuition waiver of $3,000 may be less than living expenses of $9,000, and is not the major source or amount. Nevertheless, it is substantial because it represents an amount that makes it possible for the student to attend school and participate in the exchange. Students are eligible "if at any time" their funding or exchange arrangement meet the requirements. This permits students who enter as exchange visitors under the criteria to continue their exchange visitor programs if circumstances change. For example, a student funded by the home government for the first year and funded by family funds for the remaining years could continue in exchange visitor status. During the transition period students who hold J-1 class, regardless of funding, may continue in J-1 class. [22 CFR 514.23(c)]

9.5.3 Exceptions to full course of study

In addition to the general requirements for maintaining status (see Section 9.3.6), a student must continue in a full course of study (see Section 9.5.1.2) except in the following circumstances:

(1) "During official school breaks and summer vacations if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar may be permitted to take the annual vacation during any one of the quarters or trimesters instead of during the summer."

(2) "If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer a written statement from a physician requiring or recommending an interruption or reduction in studies."

(3) "If the student is compelled to pursue less than a full course of study for a term and the student presents to the responsible officer a written statement from the

academic dean or advisor recommending the student to reduce his or her academic load to less than a full course of study due to an academic reason." (See Section 9.5.1.3.)

(4) "If the student is engaged full-time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited educational institution."

(5) "If the student is participating in authorized academic training in accordance with" academic training regulations.

(6) "If the student needs less than a full course of study to complete the academic requirements in his or her final term." [22 CFR 514.23(e)]

9.5.4 Employment

Students may engage in two kinds of employment: (1) academic training related to the course of study, and (2) other employment related to academic funding, on-campus work, or economic necessity. Each kind of employment has its own criteria and limits. [22 CFR 514.23(f) and (g)]

9.5.4.1 Academic training

Academic training is permitted while the student is enrolled in school or after completion of the program. [22 CFR 514.23(f)]

9.5.4.1.1 Qualifications and criteria. "A student may participate in academic training programs during his or her studies, without wages or other remuneration, with the approval of the academic dean or advisor and the responsible officer. A student may be authorized to participate in academic training programs for wages or other remuneration during his or her studies or commencing not later than thirty (30) days after completion of his or her studies" [22 CFR 514.23(f)(2)] if all of the following criteria are met.

(1) "[T]he student is primarily in the United States to study rather than engage in academic training." This is meant to eliminate situations in which the student studies for a short period and undertakes academic training for a longer period.

(2) "[T]he student is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited educational institution listed on his or her Form IAP-66."

(3) "[T]he student is in good academic standing with the post-secondary accredited educational institution."

(4) "[T]he student receives written approval in advance from the responsible officer for the duration and type of academic training." [22 CFR 514.23(f)(3)]

Appropriate academic training varies over disciplines. Postdoctoral training in biochemistry may consist of 36 months of paid research at one location with one faculty adviser. Academic training in music may involve a number of paid or unpaid teaching or performance opportunities. The regulations do not address, and therefore permit, sequential or simultaneous academic training, either paid or unpaid with several employers, U.S. or foreign, provided the application and approval procedures (see Section 9.5.4.1.2) are followed for each employer and activity, and the time limits (see Section 9.5.4.1.3) are not exceeded.

Of interest is the requirement that the student begin postcompletion academic training not more than 30 days after completion of studies. USIA has confirmed that the academic training must be authorized within the 30 days after completion of studies, since it is for that period of time that the student remains in J-1 status. The student may actually begin work within a time frame that reflects the realities of the work place. Most students will graduate on an academic calendar ending in May. Most businesses do not operate on a corresponding calendar. The 30-day window for authorization coupled with a flexible starting date permits the student to begin academic training at a company at the beginning of the company's fiscal year or to begin teaching or research in August or September on an academic calendar. Delaying commencement of employment beyond the semester after completion of studies would generally be viewed as a violation of status. For example, a student graduating in May would be expected to start academic training before the end of the following fall semester. Delays in beginning academic training result in loss of academic training months. The rules of duration of status (see Section 9.3.5) allow a period of 30 days after completion of program or the ending date on the IAP-66, whichever is earlier, for the exchange visitor to depart the United States or change to another visa class. To maintain continuous status the IAP-66 for academic training must have a beginning date no later than the end of the 30-day grace period. A student who completes a program on 10 May must have an IAP-66 that begins no later than 9 June, 30 days after 10 May. By delaying work until 1 September the students loses most of June and all of July and August.

The regulations as written permit unpaid academic training only prior to completion of a program. While less common than paid work, unpaid academic training is a significant part of some disciplines. "The Agency agrees that unpaid academic training following completion of the degree program is permissible when the student is supported from sources such as the home government. Sponsors must determine that these students continue to have adequate financial support to maintain their extended program stay before authorizing unpaid academic training. Sponsors continue to be responsible for these students during the period of academic training." [USIA reply to NAFSA letter of 10 February 1994]

9.5.4.1.2 Application and authorization procedures. To obtain authorization to engage in academic training, the exchange visitor must present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(1) "the goals and objectives of the specific training program";

(2) "a description of the training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training";

(3) "how the training relates to the student's major field of study"; and

(4) "why it is an integral or critical part of the academic program of the exchange visitor student." [22 CFR 514.23(f)(5)(i)]

Upon receipt of the recommendation letter the responsible officer shall:

(1) "determine if and to what extent the student has previously participated in academic training as an exchange visitor student, in order to ensure the student does not exceed the period permitted";

(2) "review the letter" for compliance with requirements; and

(3) "make a written determination of whether the academic training currently being requested is warranted and the criteria and time limitation ... are satisfied." [22 CFR 514.23(f)(5)(ii)]

The sponsor also must "evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program." [22 CFR 514.23(f)(6)] The regulations do not specify when or in what form such an evaluation is to be made. The responsible officer may wish to include this evaluation as part of the initial review and granting of academic training.

Academic training employment is part of the exchange program and therefore is authorized for purposes of the Immigration Reform and Control Act (IRCA). Evidence that the student is in status and a letter from the responsible officer granting academic training should suffice for Form I-9 purposes (see Section 9.3.7).

9.5.4.1.3 Time limitations. The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training is approved by the academic dean or advisor and approved by the responsible officer. [22 CFR 514.23(f)(4)]

Certain limitations apply. For computation of academic training, part time is counted as full time. The regulations do not specify that academic training prior to completion of studies must be less than full time. Sponsors are allowed some latitude in approving academic training provided the student continues in a full course of study and the academic training does not compromise the primary purpose of study. "Full course of study" (see Section 9.5.1.2) and "prescribed course of study" (see Section 9.5.1.3) are defined terms and in the context of the regulations refer only to exchange visitor students. Study undertaken in another visa class such as F-1, J-2, H-4, and so on can not be counted as part of the full or prescribed course of study for the purpose of calculating allowable academic training time.

Students in degree programs are permitted an overall limit of 18 months, which includes all academic training, whether before or after completion of studies. The total training period may not exceed the amount of time spent in the full course of study. The exception to this limitation is that additional time is allowed "to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his or her degree program in the United States." Case by case analysis of situations must be used to determine if this exception allows for extended academic training for those students whose programs involve required practical experience or internships to obtain professional credentials or similar recognition of completion of a program. For postdoctoral training after completion of a U.S. degree the overall limit is 36 months, which is granted in an initial unit of 18 months or less. An extension may be filed for additional time up the total maximum of 36 months.

Some confusion has arisen as to the definition of "postdoctoral" and the kinds of activities permitted during the 36 month postdoctoral academic training. The preamble discusses specifically postdoctoral students and postdoctoral research, implying the use of the academic definition, which involves upper level research undertaken under the supervision of a senior academic researcher (see *Federal Register*, 19 March 1993, p. 15190). The language at 22 CFR 514.23(f)(4)(iii) simply says that "postdoctoral" training is limited to 36 months, which some believe permits a broader definitional interpretation of any activity undertaken after receipt of the doctoral degree and is otherwise within the academic training regulations. Sponsors are reminded that academic training falls within the college and university student category and that the academic definition of "postdoctoral" is in keeping with the intent of the program. Sponsors who choose to use the broad definition to include activities not traditionally considered to be postdoctoral in the academic sense are encouraged to document and retain records on why this approach was taken either in an individual case or as an institutional policy.

For students in a prescribed course of study in a nondegree programs, the regulations indicate that the total stay is limited to a total 24 months, which includes all study time plus any authorized academic training. [22 CFR 514.23(i)] USIA has confirmed that, in fact, the student may pursue a prescribed course of study for 24 months and continue in academic training for 18 months. [USIA reply to NAFSA letter of 10 February 1994].

Examples:

- A student who has done undergraduate and graduate degrees and who had authorized academic training for 2 months each summer for all 4 of his undergraduate years and had part time academic training for 4 months during the last semester at the undergraduate level has used up 12 months of academic training. After completing the Ph.D. he is entitled to only 24 months of postdoctoral academic training.

- A graduate student who has already done graduate work outside the United States and who is admitted with advanced standing may need only 2 years of graduate school to complete the Ph.D. She is not entitled to 36 months of academic training because the program in the United States was less than 36 months, and the academic training period may not exceed the period of full course of study in the United States.
- A student receives a Ph.D. in electrical engineering and is offered a job as a systems designer in the research and development section of a computer company. He has done no previous academic training and is eligible for 18 months of academic training. Using the academic definition of "postdoctoral," this is employment, not postdoctoral training, and the student is eligible for only 18, not 36, months of academic training.
- A student is in a nondegree prescribed course of study for 14 months. Under the plain language of the regulations only 10 months of academic training are available within the 24-month overall limit. However, under the USIA interpretation of the regulation (which should be reflected in a future revision), the student is eligible for 14 months of academic training, the amount of time spent in study.

9.5.4.2 Student employment

An exchange visitor student may engage in part-time employment other than academic training when the employment meets certain criteria, and the student meets certain conditions. Sponsors will usually want to assist the student in using these kinds of employment so as to preserve as much academic training as possible for use after completion of studies.

9.5.4.2.1 Qualifying employment. The employment qualifies for approval if it meets any one of the following criteria:

> (i) is pursuant to the terms of a scholarship, fellowship, or assistantship; (ii) occurs on the premises of the post-secondary accredited educational institution the visitor is authorized to attend; or (iii) occurs off-campus when necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring exchange visitor status. [22 CFR 514.23(g)(i)]

9.5.4.2.2 Student qualification. The student may accept and continue employment if all of the following conditions are met:

> (i) [the] student is in good academic standing at the post-secondary accredited educational institution; (ii) [the] student continues to engage in a full course of study, except for official school breaks and the student's annual vacation; (iii) employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation, when it may be full time; and (iv) the responsible officer has approved the specific employment in advance and in writing. [22 CFR 514.23(g)(2)]

The regulations as they are written require written approval from the responsible officer for each of the three kinds of student employment. Of particular interest in this regard is the explicit requirement that the responsible officer authorize in writing employment based on scholarships, assistantships, and fellowships. Often these notations will be made in section 5 of the Form IAP-66 as part of its usual preparation. Some sponsors issue the Form IAP-66 for the duration of the student program; others issue it for a lesser period.

It is reasonable to conclude that the listing of funding on the Form IAP-66 constitutes written approval and that annual updating of the back of the pink copy of a multiyear Form IAP-66 constitutes annual written approval.

For this kind of employment and for on-campus employment not noted on the Form IAP-66 as a scholarship, fellowship, or assistantship, institutions will need to establish in-house procedures for preparing authorizations to meet Form I-9 requirements and to protect the student for future benefits. When the exchange visitor program sponsor is an outside agency the student will need to obtain from that agency and submit to the school written authorization for employment either on the Form IAP-66 or in a separate letter.

The responsible officer may authorize such employment for up to a maximum of 12 months at a time or for lesser periods as appropriate. The student's employment authorization is automatically withdrawn if the student's program is terminated. The 12-month maximum validity of the authorization requires at least an annual update. For example, a graduate student who holds an IAP-66 valid for 4 years still needs an annual, in-house extension for a scholarship or assistantship. It is hoped that future technical corrections to the regulations will remove this annual reauthorization requirement for standard academic funding.

9.5.5 Limitation of stay

The duration of status or length of time permitted for participation in a program is different for a student engaged in a degree program and a student engaged in a nondegree program. The ending date on Form IAP-66 controls the ending date of authorized stay (see Section 9.3.5), and the responsible officer must understand the limits acceptable for entry on the form. Except for nondegree students (see Section 9.5.5.2), a student's stay in the United States could continue uninterrupted from the first year of a bachelor's degree program through the third year of postdoctoral training provided the responsible officer has filed notification of extension and granted academic training and other work authorization as required by the regulations. [22 CFR 514.23(h)]

9.5.5.1 Degree students

Degree students are authorized to participate in an exchange visitor program as long as they are "studying at the post-secondary accredited educational institution listed on their Form IAP-66," are "pursuing a full course of study" (see Section 9.5.1.2), and are "making satisfactory advancement towards the completion of the academic program." Duration of status may continue for degree students for the duration of an authorized period of academic training (see Section 9.5.4.1).

9.5.5.2 Nondegree students

Nondegree students are limited to 24 months as long as they are participating full-time in a prescribed course of study, plus up to 18 months of academic training if they meet the criteria described in Sections 9.5.1.3, 9.5.4.1.3, and 9.5.3.

9.5.6 Comparison with other student visa classes

The visa class with which the J-1 is most often compared is the F-1 (see Section 4). The chief academic difference is that the J-1 provides for certain nondegree or nonenrolled educational programs not available on the F-1. The chief administrative and sponsorship difference is that most students who are totally funded by personal or family funds (see Section 9.5.2) are not eligible for the J-1, while no such restriction exists for the F-1. Both employ the concept of "duration of status," which permits minimal administrative interruption in the academic program. Both provide for employment for scholarships, fellowships, assistantships, on-campus work, employment required by or related to the curriculum, and academic training (J-1) or practical training (F-1). Academic training on the J-1 is limited to 18 months (36 months for postdoctoral training) and requires a job offer if being undertaken after completion of studies. The F-1 limit is 12 months, but no job offer is required for the awarding of postcompletion practical training. The application or authorization procedures differ. In general, F-1 procedures are more complex and involve applications to the INS. Analogous procedures for the J-1 are handled by the responsible officer. The F-1 does not carry an insurance requirement. INS may grant J-2 spouses and children the right to work in the United States.

Another student option for vocational and nonacademic students is the M-1 (see Section 5). These students generally do not qualify under the J-1 definitions and eligibility criteria for college and university students. However, depending on their fields and activities, they may qualify for J-1 trainee status in programs that may or may not be connected with a college or university. [22 CFR 514.23]

9.6 PROFESSORS AND RESEARCH SCHOLARS

The regulations state that

> a primary purpose of the Exchange Visitor Program is to foster the exchange of ideas between Americans and foreign nationals and to stimulate international collaborative teaching and research efforts. The exchange of professors and research scholars promotes interchange, mutual enrichment, and linkages between research and educational institutions in the United States and foreign countries. [22 CFR 514.17]

"Professor" and "research scholar" are two separate categories, but because they are related, the regulations governing them are contained in the same subsection. These categories do not include short-term scholars or alien physicians engaged in medical training.

9.6.1 Definitions

A professor is an "individual primarily teaching, lecturing, observing, or consulting at post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor." [22 CFR 514.4(e)]

A research scholar is an "individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor." [22 CFR 514.4(f)]

9.6.2 Selection criteria

Professors and research scholars may be sponsored as exchange visitors only if they have appropriate academic or similar credentials, will be participating in a program that furthers the objectives described in Section 9.6, and have activities that are compatible with those objectives. "The exchange visitor's appointment to a position shall be temporary, even if the position itself is permanent. The individual shall not be a candidate for a tenure-track position." [22 CFR 514.20(d)] Temporariness is an important characteristic of this sponsorship. Although the individual may be in a position that is by nature or definition a permanent one in the institution, the intention of the sponsor and the exchange visitor as to the participant's stay must be temporary.

9.6.3 Completion of the "category" section on Form IAP-66

Because "professor" and "research scholar" are separate categories, one must be selected in completing the Form IAP-66. Some versions of Form IAP-66 combine these two categories. USIA has redesigned the form to correct this.

The selection should reflect the primary activity of the exchange visitor. The choice has minimal effect on the activities of the individual but is important to USIA for statistical recording and analysis. "At the discretion of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing, unless disallowed by the sponsor." [22 CFR 514.20(h)]

The primary activity also may shift from one category to another during the validity period of Form IAP-66. When a new Form IAP-66 is issued for extension, transfer, change of location, or other purposes, the correct category for the primary activity for the period covered by Form IAP-66 should be selected. "Because these activities are so intertwined, such a change of activity will not be considered a change of category necessitating a formal approval by the responsible officer or approval by the Agency." [22 CFR 514.20(h)] (See Section 9.2.5.3)

9.6.4 Employment

Professors or researchers are permitted to work as described on the Form IAP-66 and may accept additional employment as authorized by the sponsor in accordance with the regulations (see Section 9.2.9).

9.6.4.1 Location of the exchange

> Professors or research scholars shall conduct their exchange activity at the location(s) listed on the Form IAP-66 which could be either at the location of the exchange visitor sponsor or the site of a third party facilitating the exchange. An exchange visitor may also engage in activities at [a] location not listed on the Form IAP-66 if such activities constitute occasional lectures or consultations (see Section 9.6.4.2). [22 CFR 514.20(f)]

This is an important regulatory formalization of a longstanding, though sometimes confusing, procedure. It is especially designed and carefully worded to permit the kind of public/private/corporate flexibility in location of activity and funding sources that has become standard and essential in higher education teaching and research. The options for the activities to be ongoing, to take place at more than one location and to be facilitated or funded by a third party (see Section 9.2.3.5) make it possible for the educational institution to include exchange visitor professors and researcher scholars in cooperative research and teaching. This is accomplished by listing pertinent location and funding information on the initial Form IAP-66 or by submitting an updated Form IAP-66 to USIA as necessary.

Examples:

- A professor at institution A holds a Form IAP-66 on which the activities are listed as "faculty in the department of X teaching Y." Funding is listed as coming from the sponsor, institution A. The professor is offered the opportunity to teach one course at neighboring institution B. The responsible officer may approve this by amending the activities section of Form IAP-66 to read "Faculty in the department of X teaching Y. Will also teach one course in Y at institution B." The funding section is also amended to show funding from another organization, institution B.

- A research scholar at institution A will work in a department that has a collaborative arrangement with a nearby corporate research facility. The scholar will work at the corporate site and will be paid by the corporation. Her work will be overseen and directed by the institutional faculty member, and she will be carried in the institution's records as one of its research scholars. Any publications or presentations resulting from the work will credit the university and the corporation in accordance with the collaborative agreement between the two. The responsible officer may simply use the activities and funding sections of Form IAP-66 to specify the parameters of this exchange. This information may be included on the original Form IAP-66 if known at the time or on an amended Form IAP-66 sent to the USIA processing center at a later time (see Section 9.2.5.3).

Because both the activities and the sources of funding are specified on Form IAP-66, they are part of the purpose for which the exchange visitor came to the United States and meet the employment authorization requirements for Form I-9 clearance under IRCA (see Section 9.2.9).

9.6.4.2 Occasional lectures or consultations

> Professors and research scholars may participate in occasional lectures and short-term consultations, unless disallowed by the sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. If wages or other remuneration are received by the exchange visitor for such activities, the exchange visitor must act as an independent contractor as such term is defined in 8 CFR 274(a)(1)(j). [22 CFR 514.20(g)]

The regulatory specification of independent contractor is the result of discussions between USIA and INS. Both believe that this is the best way to meet employment authorization and verification requirements while minimizing the administrative difficulties. 8 CFR 274a(1) discusses what constitutes hiring an employee as opposed to paying an individual to provide a service. For example, an institution pays employees on a regular basis to be accountants or cafeteria cooks. Those people are employees and the employer must meet IRCA rules by completing a Form I-9 on each one. The institution may also hire individuals to do a special cost analysis or cater a special event. Because these people are paid to complete a particular job rather than to provide ongoing service, they are not employees. The institution is not required to complete a Form I-9 for them. The new Exchange Visitor Program use of the independent contractor construct will require that sponsors assist in the process of educating employers. Although this kind of work authorization may seem contrary to INS regulations, it is based on a memorandum of understanding between USIA and INS. The employment is authorized for the exchange visitor, and the employer is acting within the law in employing the exchange visitor. [22 CFR 514.20(g)]

9.6.4.2.1 Criteria. To ensure that these activities do not interfere with and are in keeping with the activities described on Form IAP-66, they must: "(i) be directly related to the objectives of the exchange visitor's program; (ii) be incidental to the exchange visitor's primary program activities; and (iii) not delay the completion date of the visitor's program." [22 CFR 514.20(g)(1)] Also, included in the term "occasional" is the concept of a single event rather than an ongoing activity.

9.6.4.2.2 Procedures for approval. If the occasional lectures or consultations will involve wages or other remuneration the exchange visitor must present to the responsible officer

(A) a letter from the offeror setting forth the terms and conditions of the offer to lecture or consult including the duration, number of hours, field or subject, amount of compensation, and description of such activity; and (B) a letter from his or her department head or supervisor recommending such activity and explaining how it would enhance the exchange visitor's program. [22 CFR 514.20(g)(2)(i)]

The responsible officer must review these letters and "make a written determination whether such activity is warranted and satisfies the criteria." [22 CFR 514.20(g)(2)(ii)] (See Section 9.6.4.2.1.) A letter from the responsible officer confirming that the activity meets the requirements will serve as authorization of this employment for the exchange visitor's and the employer's records. No Form I-9 should be required of the exchange visitor by the outside employer, because the visitor is acting as an independent contractor.

9.6.5 Limitations of stay

Form IAP-66 may be issued initially for the period of the exchange up to a maximum of 3 years. Under certain circumstances extensions may be granted for an additional 36 months. [22 CFR 514.20(i) and (j)]

9.6.5.1 Six-month extension

The first 6 months of the 36-month period may be granted by the responsible officer through the usual notification process if the extension is for good cause and for the purpose of providing necessary time to complete teaching and research responsibilities. These might include teaching the final quarter or semester of courses, completing and writing up the results of a research project, or presenting findings at a professional or scientific meeting. [22 CFR 514.20(j)(1)]

9.6.5.2 Additional extensions

USIA must approve any extension beyond 6 months.

Application to the Agency for such extension may be filed at any time, but should be filed not later than 45 days before the expiration of the exchange visitor's authorized stay. The application shall be in writing and shall: (i) state the period of time the sponsor is requesting the extension for the exchange visitor; and (ii) include a letter from the department head or supervisor of the exchange visitor: (A) indicating the expected date of completion of the exchange program; and (B) providing a description of the circumstances which warrant such an extension. [22 CFR 514.20(j)(2)]

The request for extension may be filed immediately after the exchange visitor begins the program. This approach may be useful for projects known at the outset to be longer than 3 years. An exchange visitor who has applied for such an extension is considered to be in status and in a valid program during the period that USIA is considering the application. If USIA denies the request, the exchange visitor is considered to be in status "for an additional period of 30 days from the date of such notice or for a period of 30 days from expiration of the visitor's Form IAP-66, whichever is later." [22 CFR 514.20(j)(3)] The denial of the application does not preclude the filing of a notification extension, if necessary, to cover any remaining part of the initial allowable 3-year period.

9.6.6. Comparison with other visa classes

The visa class most often compared with the J-1 professor or research scholar is the H-1B temporary worker (see Section 10). The chief differences between the J-1 and the H-1B are intent and purpose. The J-1 is for the purpose of exchange and requires temporary intent while the H-1B is for the purpose of employment and permits dual or future permanent intent. The H-1B, unlike the J-1, requires approval by the Department of Labor and a petition to and approval by INS with accompanying lengthy delays. The H-1B does not carry the 2-year home country physical presence requirement (see Section 9.14) which may accompany the J-1 in certain situations. [22 CFR 514.17]

9.7 SHORT-TERM SCHOLARS

Before new regulations were published on 19 March 1993, sponsors were not permitted to bring a professor or research scholar to the United States on the Exchange Visitor Program for a period of less than 3 weeks. The new short-term scholar category is not subject to a minimum time-in-country restriction and can be used for visits as short as 1 day. In conjunction with the "specialist" category (see Section 9.8) this category provides for activities roughly equivalent to the international visitor category now reserved for USIA use.

Short-term scholars are required to comply with USIA's insurance requirements and where applicable, will be subject to the 2-year home country physical presence requirement.

Responsible officers are cautioned to use this category only for those scholars who are coming for a short period and have no plans to continue beyond the 4-month limit. Extensions beyond 4 months are not permitted. Responsible officers should explain this restriction to scholars using this category. [22 CFR 514.20 (sic: 514.21)] [Note: The section of the published regulations dealing with short-term scholars was, through typographical error, incorrectly headed; the correct head is 22 CFR.21.]

9.7.1 Definition

A short-term scholar is defined as a

> professor, research scholar, specialist, or a person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. [22 CFR 514.4(b)]

Examples include educators, scientists, research fellows, writers, and museum administrators.

9.7.2 Location of the exchange

A short-term scholar is permitted to participate in activities such as conferences, workshops, seminars, and other events if these activities are stated on his or her Form IAP-66. Note the option for more than one location for the exchange. (See Section 9.6.4.1 for a fuller discussion on the advantages of this option.)

9.7.3 Limitation of stay

The 3-week minimum duration of stay requirement is lifted for this category of participant. The maximum duration of stay is limited, however, to 4 months. A short-term scholar is not permitted to extend his or her stay. Applications for change of category are evaluated by USIA using guidelines set by the regulations (see Section 9.3.9).

9.7.4 Special exceptions

Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing cross-cultural activities and orientation (see Sections 9.2.3.3 and 9.3.4). However, sponsors are encouraged to provide such programs for short-term scholars whenever appropriate. [22 CFR 514.21]

9.8 SPECIALISTS

Earlier regulations included specialists with research scholars. In the current regulations "specialist" is established as a separate category. It does not include professors, research scholars, short-term scholars, or alien physicians in training programs. In conjunction with "short-term scholar" (see Section 9.7) this category provides for activities roughly equivalent to the international visitor category now reserved for USIA use. [22 CFR 514.26]

9.8.1 Definition

A specialist is an "individual who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills." The exchange of specialists promotes mutual enrichment and furthers linkages among scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions. "This category is intended for exchanges with experts in such areas, for example, as mass media communication, environmental science, youth leadership, international educational exchange, museum exhibitions, labor law, public administration, and library science." [22 CFR 514.4]

9.8.2 Visitor eligibility

A foreign national shall be eligible to participate in an exchange visitor program as a specialist if the individual:

(1) is an expert in a field of specialized knowledge or skill;

(2) seeks to travel to the United States for the purpose of observing, consulting, or demonstrating his or her special knowledge or skills; and

(3) does not fill a permanent or long term position of employment while in the United States. [22 CFR 514.26(d)]

9.8.3 Visitor selection

Sponsors shall screen and select specialists before accepting them for the program. Sponsors shall use a formal selection process, including at a minimum:

(1) evaluation of the qualifications of foreign nationals to determine whether they meet the definition of specialist (see Section 9.8.1); and

(2) screening of foreign nationals to ensure that they are selected according to program administration criteria. [22 CFR 514.26(e)] (See Section 9.2.3.)

9.8.4 Program disclosure

Before the program begins, the sponsor shall provide the specialist with:

(1) information on the length and location(s) of his or her exchange visitor program;

(2) a summary of the significant components of the program; and

(3) a written statement which clearly states the stipend, if any, to be paid to the specialist. [22 CFR 514.26(f)]

9.8.5 Location of the exchange

"The specialist shall participate in an exchange visitor program at the location(s) listed on his or her Form IAP-66." [22 CFR 514.26(h)] (See Section 9.6.4.1 for a fuller discussion of the advantages of being able to choose more than one location for the exchange.)

9.8.6 Limitation of stay

"The specialist shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed 1 year." There are no regulatory provisions for extensions beyond the 1-year period, although a request could be made to USIA in exceptional circumstances. [22 CFR 514.26(i)]

9.9 TRAINEES

9.9.1 Definitions

USIA defines a trainee as "an individual participating in a structured training program conducted by the selected sponsor."

"Specialty occupations" are defined as occupations requiring

> theoretical and practical application of a body of highly specialized knowledge to perform fully in the stated field of endeavor. It requires completion of a specified course of education, where attainment of such knowledge or its equivalent is the minimum competency requirement recognized in the particular field of endeavor in the United States.

"Non-specialty occupations" are defined as those that are not specialty occupations. "Non-specialty occupations range from unskilled occupation up to and including skilled occupations requiring at least 2 years training or experience."

"On-the-job training" is defined by the Agency as an individual's observation and participation of a given set of duties, demonstrated by experienced workers for the purposes of providing such training.

In the context of permitting third-party agreements with the training sponsor, USIA defines a third party as an "entity cooperating with or assisting the sponsor in the conduct of the sponsor's program." [22 CFR 514.2]

9.9.2 Sponsor Designation

USIA will designate training programs only in specialty and non-specialty occupations, and not in "unskilled" occupations. USIA defines 11 specialty and non-specialty occupational categories in which it will designate training programs: (1) arts and culture; (2) information media and communications; (3) education, social sciences, library sciences, counseling, and social services; (4) management, business, commerce, and finance; (5) health related occupations; (6) aviation; (7) the sciences, engineering, architecture, mathematics, and industrial occupations; (8) construction and building trades; (9) agriculture, forestry, and fishing; (10) public administration and law; and (11) other (which the sponsor must specify). A sponsor may provide training only in categories for which designation has been approved. [22 CFR 514.22(c)(2)]

Sponsors may conduct programs only in the categories and at the levels (specialty or non-specialty or both) for which designation has been approved. [22 CFR 514.22(c)(2)] If a sponsor decides at a later date to add a new type of training, the sponsor need not apply to be redesignated, but will submit an application to have an existing designation amended by the addition of one or more new training categories and/or levels.

An applicant for designation as a training program sponsor must provide to USIA:

- documentation of the applicant's ability to comply with the general requirements of all sponsors (see Section 9.2);
- qualifications to provide such training;
- forms and procedures used by the sponsor to ensure any third party compliance;
- a copy of the agreement with any third party (or a copy of the document the sponsor intends to execute);
- evidence of accreditation or application for accreditation (see Section 9.9.4);
- certification that adequate physical space, resources, and training staff will be provided for the program;
- certification that the program is not designed to recruit nonimmigrants for employment in the United States;
- certification that the training program will not displace full- or part-time employees;
- a statement for each occupational category under which the applicant is applying, whether the training will be in specialty or non-specialty occupations; and
- a training plan for each occupational category sought by the applicant (see Section 9.9.3.1). [22 CFR 514.22(f)]

Although the point is not fully explained in the regulations, it seems that USIA will not require separate applications for "specialty" and "non-specialty" programs by occupational category. Therefore, the maximum number of applications a trainee sponsor needs to submit is 11 (rather than 22).

Once each occupational category has been designated, the sponsor is required to develop training plans for each trainee or group of similarly situated trainees. These training plans must be kept in the sponsor's files for a minimum of 3 years.

9.9.2.1 Specialty vs. non-specialty occupation

USIA designates training programs in both specialty and non-specialty occupations. Although USIA makes no distinction as to which classification is "worthier," USIA scrutinizes training programs in non-specialty occupations more closely. In USIA's view, non-specialty occupations are more likely to include work that is for employment rather than for training purposes. The use of the Exchange Visitor Program for employment purposes only is strictly forbidden by the regulations. [*Federal Register*, 19 March 1993, p. 15187]

9.9.2.2 Unskilled occupations

USIA will not approve an application for designation to conduct training in one of the "unskilled" occupations listed in the regulations. USIA considers employment in these occupations to be for "staffing purposes" rather than training. USIA's list of unskilled occupations originates with the Department of Labor's Schedule B, the listing of occupations that are in sufficient supply in the United States. Although the list is not intended to describe unskilled occupations, the occupations listed in Schedule B meet USIA's definition of unskilled occupations. At its discretion, USIA will delete or add occupations to this list.

The occupations listed in Appendix E to the regulations include: assemblers, attendants (parking lot), attendants (service workers such as personal services attendants, amusement and recreation service attendants), automobile service station attendants, bartenders, bookkeepers, caretakers, cashiers, charworkers and cleaners, chauffeurs and taxicab drivers, cleaners (hotel and motel), clerks (general), clerks (hotel), clerks and checkers (grocery store), clerk typist, cooks (short order), counter and fountain workers, dining room attendants, electric truck operators, elevator operators, floorworkers, groundskeepers, guards, helpers (any industry), household domestic service workers, housekeepers, janitors, key punch operators, kitchen workers, laborers (common), laborers (farm), laborers (mine), loopers and toppers, materials and handlers, nurses' aides and orderlies, packers, markers, bottlers, porters, receptionists, sailors and deck hands, sales clerks (general), sewing machine operators and handstitchers, stock room and warehouse workers, streetcar and bus conductors, telephone operators, truck drivers and tractor drivers, typists (lesser skilled), ushers (recreation and amusement), and yard workers. [22 CFR 514 Appendix E]

9.9.3 Obligations of trainee sponsors

The sponsor of a training program is required to: (1) ensure that the individuals or entities providing training are qualified to act in such capacity; (2) "ensure that skills, knowledge, and competence are imparted to the trainee through a structured program of activities which are supportive and appropriate to the training experience"; (3) develop a detailed training plan for each trainee or group of trainees (see Section 9.9.3.1); (4) supervise and evaluate trainees (see Section 9.9.3.4); and (5) ensure that sufficient staff and resources are allocated to conduct the training. USIA's requirement for a "structured program of activities" might include, but is not limited to, classroom training, seminars, rotation through several departments, on-the-job training, or attendance at conferences. [22 CFR 514.22(d)]

9.9.3.1 The training plan

The sponsor is required to develop a training plan, prior to the start of training, for each trainee or group of similarly situated trainees. The training plans must include: (1) the objectives of the training; (2) the skills to be imparted to the trainee; (3) a copy of the training schedule; (4) a justification for using on-the-job training; and (5) the evaluation and supervision procedures. USIA is authorized to inspect the training plan at any time. [22 CFR 514.22(g)]

When applying for designation, sponsors are required to submit a training plan for each category in which training will be offered rather than for each individual trainee. Three types of training plans meet this requirement. First, if the sponsor has designed a program with a set list of trainees, a copy of the training plan may be submitted to USIA. Second, if the applicant has not developed a new training plan but has conducted similar training in the past, a copy of a previously used training plan may be submitted. Third, if the applicant intends to create a training plan for as yet unspecified trainees, the applicant may submit a hypothetical training plan. [22 CFR 514.22(f)(6)]

9.9.3.2 Use of third parties

If a sponsor elects to use a third party to carry out any portion of the training program, the sponsor must ensure that the third party complies with USIA's regulations. Although a third party may conduct the training, the sponsor's "obligation to monitor, control, and oversee the third party is absolute. Simply put, a third party may act for or in place of the sponsor; however, the accountability of the sponsor shall be non-delegable." [*Federal Register*, 19 March 1993, p. 15188]. Violations by the third party are imputed to the sponsor.

A signed written agreement between the sponsor and the third party should state the third party's agreement to comply with the regulations. This agreement must be retained by the sponsor. [22 CFR 514.22(e)]

9.9.3.3 Record-keeping requirements

The sponsor of a training program is required to keep copies of all records regarding trainees, training plans, agreements with third parties, and evaluations. Records must be kept for 3 years and, at USIA's request, be made available for inspection. [22 CFR 514.22(i)]

9.9.3.4 Evaluations

The sponsor is required to develop evaluation procedures for each trainee in the program. Evaluations must include, at a minimum, midpoint and concluding evaluations. The evaluations must be completed by the trainee and his or her supervisor and signed by both parties. For a training program of less than 3 months, one evaluation is required when the program is completed. [22 CFR 514.22(m)]

9.9.3.5 Financial and program disclosures

In addition to the prearrival information all sponsors are required to send to exchange visitors (see Section 9.2.3.2), a sponsor of a training program also must provide exchange visitor trainees with the following information prior to their arrival in the United States: (1) a written statement stating the stipend, if any, to be paid to the trainee; (2) costs and fees to be paid by the trainee; (3) an estimate of the living expenses to be incurred during the trainee's stay; and (4) a summary of the training program. [22 CFR 514.22(l)]

9.9.4 Flight training

In addition to meeting requirements for all training sponsors, applicants for flight training designation also must meet the following qualifications. At the time of applying for designation, the program must be a Federal Aviation Administration-certified pilot school pursuant to Title 14, *Code of Federal Regulations*, Part 141, and either (1) be accredited by an agency listed in the most current edition of the U.S. Department of Education's "Nationally Recognized Accrediting Agencies and Associations" or carry regional accreditation, or (2) have commenced the accreditation process with the agencies listed above. In this case, approval for designation will be for 12 months and continued only if the flight school receives accreditation. [22 CFR 514.22(n)]

9.9.5 Limitation of stay

Participants in trainee programs (non-flight training) are authorized to stay in the United States for the period of time authorized under the sponsor's designation not to exceed 18 months. [22 CFR 514.22(k)] Participants in flight training programs are permitted to stay in the United States for a period not to exceed 24 months. [22 CFR 514.22(n)(2)]

9.9.6 Differences between J-1 and H-3 trainees

J-1 and H-3 trainees are similar in many respects. The main differences between them are that (1) J-1 trainees may engage in "productive" employment and H-3 trainees may engage only in incidental productive employment; (2) J-1 trainees are not permitted to remain in the United States as long as H-3 trainees; (3) J-1 visas are more easily and quickly obtained than H-3 visas; (4) H-3 petitions, unlike J-1 applications, must be approved by INS; and (5) a fee is required for an H-3 petition and for extension of stay in H-3 status, whereas no fee is required for Form IAP-66 or for an extension of stay within the categorical limitation.

Neither H-3 nor J-1 trainees require labor certification. Both types of trainees may receive remuneration for their services.

9.10 Alien Physicians

The program sponsor and participants should understand the special regulations that govern the participation in an exchange visitor program of foreign medical graduates or alien physicians. Alien physicians, the term used in the USIA regulations, refers to foreign nationals who have graduated from any medical school, even foreign graduates of U.S. schools. The sponsor must be particularly aware of the distinctions made between programs designated P-1, P-2, and P-3 for medical participants (see Section 9.1.2.1.2). Alien physicians who come to the United States to receive graduate medical education or training are subject to strict examination requirements before being granted J-1 classification, to time limitations on the length of the training permitted, and to the imposition of the 2-year home country physical presence requirement with limited options for waiver (see Section 9.14). [22 CFR 514.27]

9.10.1 Definitions

Unlike students, professors, researcher scholars, and trainees, alien physicians are not a separate category and are appropriately absent from the list of categories in 22 CFR 514.4. They are, instead, participants in those categories depending on their activities. Note one exception. "Medical trainee" appears as a category on the Form IAP-66. It refers only to those physicians who are sponsored for training by the Educational Commission for Foreign Medical Graduates (ECFMG) (see Sections 9.10.2 and 9.10.4) and who are participants in a trainee program (see Section 9.9).

Congress has shown an exceptional interest in the activities of alien physicians, which makes their activities in any category subject to additional scrutiny, documentation, or limitations. For this reason they are given separate treatment in the regulations.

9.10.1.1 Foreign medical graduates, alien physicians, or "graduates of a medical school"

In the use of all of these terms one should be aware of the distinction between foreign nationality and foreign education, since some U.S. citizens study medicine abroad and some foreign nationals obtain U.S. medical degrees.

A foreign medical graduate (FMG) is a person who has graduated from a medical school outside the United States and may be a foreign national or a U.S. citizen. In recent years the term "international medical graduate" has come into use as well.

Congress has defined "graduates of a medical school" as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine." [Act 101(a)(41)] This rather ambiguous definition is intended to include aliens who have graduated from a medical school in a foreign country or who otherwise have earned in a foreign country their qualifications to practice medicine. It is meant to exclude aliens of national or international renown in the field of medicine even if they have had their medical education outside the United States. The Departments of State and Justice have not defined what constitutes national or international renown in the field of medicine in this context. In practice the guidelines used for employment-based preference 1A determination should suffice (see Section 13.4.3.2.1). The effect of this definition is to control the training and patient care activities of foreign medical graduates while allowing some exceptions to this control for exceptionally qualified senior physicians.

9.10.1.2 Graduate medical education or training

Graduate medical education or training means participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include programs involving observation, consultation, teaching or research in which there is no or only incidental patient care. This program may consist of a medical specialty or a directly related medical subspecialty or both. [22 CFR 514.2]

9.10.2 Nonclinical exchange programs at academic institutions

A United States university or academic medical center which has been designated an exchange visitor program by the Director of the United States Information Agency is authorized to issue Form IAP-66 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research. [22 CFR 514.27(c)]

If there is no patient care or if the patient contact is incidental the physician is not required to pass special medical or English language exams (see Section 9.10.5). If the primary purpose of the exchange visitor's participation in a program is of a clinical nature, the exchange visitor may not be documented under a P-1 program. In such cases, the alien physician must be documented under the trainee program of the ECFMG (see Section 9.10.4).

In broad terms these activities can be divided into "looking" (see Sections 9.10.2.1 and 9.10.2.3), "touching," (see Section 9.10.2.2) and "doing" (see Section 9.10.4). Looking, no patient care, indicates that the physician will at most attend or give lectures, go into patient areas as an observer or consultant, or work on research tissue and specimens that have no direct bearing on patient care. Touching, incidental patient contact, indicates clinical patient contact which is directly supervised. Incidental patient contact may be difficult to define, but some key elements help to narrow the definition. The primary activity and purpose may not be patient care either at the training or the teaching level. A U.S. physician must exercise direct supervision and the alien physician must not have final responsibility for diagnosis and treatment. In most cases making a diagnosis and entering it in a patient chart, prescribing treatment or medication which is administered by the physician or other health care professionals, or performing surgery is beyond the scope of incidental patient contact. Examples of activities which may be acceptable include: doing a diagnostic examination in the presence of a senior physician who repeats the examination or ensures at every step that it is done correctly and the proper diagnostic information is obtained; being present during therapies and treatment with opportunities for hands on experience in ways that do not compromise the care of the patient; being present in the operating room and having direct patient contact, but not performing procedures.

Note that for both "no patient care" and "incidental patient contact" written confirmation using prescribed language must accompany the Form IAP-66.

9.10.2.1 No patient care

If no patient care is involved in the alien physician's duties, the responsible officer must append to Form IAP-66 a signed certificate stating, "This certifies that the program in which [name of physician] is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care services is involved."

9.10.2.2 Incidental patient contact

If incidental patient contact is involved in the alien physician's duties, the dean of the medical school or the dean's designee must append to Form IAP-66 a signed statement certifying the following five points:

1. The program in which [name of physician] will participate is predominantly involved with observation, consultation, teaching, or research.
2. Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the state of ______.
3. The alien physician will not be given final responsibility for the diagnosis and treatment of patients.
4. Any activities of the alien physician will conform fully with state licensing requirements and regulations for medical and health care professionals in the state in which the alien physician is pursuing the program.
5. Any experience gained in this program will not be creditable toward any clinical requirements for medical specialty board certification.

9.10.2.3 Public health and preventive medicine programs

An alien physician who comes to the United States for the purpose of participating in a public health or preventive medicine program sponsored by a university, medical center, school of public health, or other public-health institution is not required to pass medical or English language exams if his or her duties will not involve any patient care. In such a case, the responsible officer must append to Form IAP-66 a certificate stating, "This certifies that the program in which [name of physician] is to be engaged does not include any clinical activities involving direct patient care." [22 CFR 514.27(d)]

9.10.3 Nonclinical exchange programs sponsored by other organizations

9.10.3.1 ECFMG-sponsored nonclinical programs

Participants in these programs generally do not have to pass medical science or English language exams and are not required to hold ECFMG certification. These programs include, but are not limited to, the following.

- Programs involving observation, consultation, teaching, and research. ECFMG most often provides this service to hospitals and other institutions that do not have their own exchange visitor programs or whose exchange visitor programs are not designated for those activities. In such cases the host institution must provide the appropriate "no patient care" or "incidental patient contact" letters (see Section 9.10.2.1 and 9.10.2.2).

- Grants and sponsorship for faculty exchanges in the basic sciences. This program is designed to provide basic science faculty at foreign medical schools opportunities and experiences in basic science teaching in U.S. medical schools.
- The "Selected Opportunities in Advanced Short Term Training" (SOAST), as the name implies, provides unique exchange opportunities tailored to meet specific needs.

9.10.3.2 Programs sponsored by hospitals and related institutions

Programs sponsored by hospitals and related institutions are designed to provide participants (other than medical doctors entering internships, residencies, and specialized clinical training, as described in Section 9.10.4) with opportunities for clinical training in graduate nursing, nurse anesthesiology, medical technology, radiologic technology, and allied health fields. These programs may sponsor foreign physicians for nonphysician activities and training as permitted by their program designations. Any question regarding the appropriateness of such sponsorship should be directed to USIA.

9.10.4 Clinical exchange programs

Alien physicians "who wish to pursue programs of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions" must be sponsored by ECFMG, which publishes information booklets and brochures on its programs, activities, and services. Information not contained in this chapter is available directly from the commission.

ECFMG, under its trainee program, is the sole agency authorized to sponsor alien physicians as exchange visitors for internship, residency, specialized clinical training, and in other positions involving more than incidental patient contact.

USIA has stated its interpretation that "federal law requires that foreign physicians seeking to pursue graduate medical education or training in the United States must do so on a J-1 visa." [*Federal Register*, 19 March 1993, p. 15192] The federal statutes dealing with other nonimmigrant classes do not support this assertion. Congress has provided for options other than the J-1 for clinical training, although it may be more difficult to qualify for those visa classes. (See Sections 6, 9.16.4., and 10.) [22 CFR 514.27(b)]

To defray the administrative costs of sponsorship, ECFMG charges an annual fee directly to the alien physician or the training hospital for the services it renders. These services include the processing of Form IAP-66 for initial or continued sponsorship, counseling, verifying ECFMG certification, and similar matters. ECFMG has a comprehensive credentials evaluation system that includes direct correspondence between ECFMG and the alien physician's medical school to verify medical education. The credentials evaluation and the need for specific supporting documents may delay ECFMG certification and/or sponsorship for several weeks or months. Institutions are advised to begin the process of certification well in advance of the intended starting date.

Inquiries concerning credentials for ECFMG certification or eligibility for ECFMG sponsorship should be submitted to ECFMG.

All clinical trainees must meet certain requirements. They shall:

- "have adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States";
- "be able to adapt to the educational and cultural environment in which they will be receiving their education or training";
- "have the background, needs, and experiences suitable to the program" (see Section 9.2.3.1);
- "have competency in oral and written English";
- "have passed either Parts I and II of the National Board of Medical Examiners Examination" or its equivalent or be exempt from those exams (see Section 9.10.5);
- "provide a statement of need from the government of the country of their nationality or last legal permanent residence." This may be for residency and fellowship if the home country provides a single letter for both the specialty and the subspecialty or a separate letter for each. The statement also confirms that the alien physician has made a commitment to return to his or her home country upon completion of the training in the United States. The foreign government agency which provides this statement is usually roughly equivalent to the U.S. Department of Health and Human Services. The precise language of the statement has been approved by the Secretary of Health and Human Services, and a copy is provided by ECFMG in its sponsorship application packet. Deviations from that wording usually do not meet requirements and prevent the physician from obtaining ECFMG sponsorship. Because the home country letter is a statutory requirement, if the home country declines to provide the letter or letters the alien cannot obtain ECFMG sponsorship for clinical training. This provision of the law is used by some countries to control the emigration of their physicians.
- "submit an agreement or contract from an accredited U.S. medical school, an affiliated hospital, or a scientific institution to provide the accredited graduate medical education. The agreement or contract must be signed by both the alien physician and the official responsible for the training."

9.10.5 Examinations, ECFMG certification, and medical licensure

To qualify for J-1 classification for clinical training, all alien physicians (i.e., all aliens who have received their medical degrees or qualifications abroad) must: pass Parts I and II of the National Board of Medical Examiners Examination (NBMEE) or an equivalent examination as determined by the Secretary of Health and Human Services (HHS) [Act 212(j)]; hold ECFMG certification; and qualify for the training position being offered, which usually requires licensure of some kind given by the state in which the training will take place. These three related requirements are discussed separately. More detailed information on J-1 sponsorship and ECFMG certification is available from ECFMG. More detailed information on licensure and examinations for same is available from the National Board of Medical Examiners (NBME), the Federation of State Medical Boards (FSMB), or the state licensing authority in the capital city of the state in question. (For exceptions to these requirements see Sections 9.10.5.1, 9.10.5.2, and 9.10.5.3.)

9.10.5.1 Examinations

9.10.5.1.1 Medical examinations. There are three reasons for an FMG to take medical examinations:

- to meet federal law requirements for J-1 sponsorship under ECFMG,
- to meet professional and federal requirements for ECFMG certification, and
- to meet state requirements for medical licensure.

The FSMB and the NBME have worked together to establish a single, three step examination for medical licensure in the United States that also meets visa and ECFMG certification requirements. The United States Medical Licensing Examination (USMLE) is open equally to graduates of foreign medical schools and provides a common evaluation system for applicants for medical licensure. The USMLE Steps 1, 2, and 3 replaces the Federation Licensing Examination (FLEX) and the NBME Parts I, II, and III. FLEX was administered for the last time to applicants for initial licensure in December 1993. Steps 1 and 2 of USMLE were given for the first time in June and September 1992 by NBME to students/graduates of U.S. and Canadian medical schools and by ECFMG to students/graduates of foreign medical schools. The Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) was administered for the last time in July 1993. As of 1994, ECFMG administers only Step 1 and Step 2 of USMLE and the ECFMG English exam.

Step 1 of USMLE assesses whether the candidate can apply the knowledge and understanding of key concepts of basic biomedical science. Step 2 assesses whether the candidate can apply the medical knowledge and understanding of clinical science considered essential for provision of patient care under supervision. Step 3 was administered for the first time in June 1994 by the various state licensing authorities under the auspices of the FSMB. Step 3 assesses whether an examinee can apply the medical knowledge and understanding of biomedical and clinical science considered essential for the unsupervised practice of medicine.

Section 212(j) of the Act names the NBMEE Parts I and II or an equivalent determined by HHS as a requirement for J-1 sponsorship for clinical training. As an examination, the NBMEE no longer exists. HHS publishes its determinations of equivalency in the *Federal Register* and has declared the USMLE to be equivalent to the NBMEE. Following is a brief review of the exams which were available in the past. Various combinations of parts of these exams will, for a period of time, continue to meet federal requirements for J-1 sponsorship, state requirements for licensure, and ECFMG requirements for certification. Both the ECFMG English exam and the Test of English as a Foreign Language (TOEFL) will continue to be given to satisfy the English language requirement.

NBMEE Part I was administered for the last time in September 1991, and Part II in April 1992. Part I was a 2-day examination of the basic medical sciences. Part II was a 2-day examination in the clinical sciences. Students/graduates of foreign medical schools were permitted to take the NBMEE Parts I and II for the first time in September 1989. (Prior to September 1989, students/graduates of the American University of Beirut had been permitted to take NBMEE Parts I and II as noncandidates for certification/licensure.) Foreign medical graduates who passed Part I and Part II became eligible for ECFMG certification and also met the medical science examination requirement for a visa. They also completed two of the three Parts for medical licensure in the United States. Foreign national physicians were not eligible for NBME certification and were not permitted to sit for NBMEE Part III.

FMGEMS was first given in July 1984 and last given in July 1993. It was a 2-day examination consisting of 1 day of basic medical sciences and 1 day of clinical sciences. Foreign medical graduates who passed FMGEMS became eligible for ECFMG certification and met the medical science examination requirement for a visa. An additional examination was required for licensure.

The Visa Qualifying Exam (VQE) was a 2-day medical and clinical sciences exam administered once a year in September from 1977 to 1983. This examination was for ECFMG certification and visa purposes only. An additional exam was required for licensure.

FLEX was a medical sciences examination administered by individual states of the United States for licensure purposes. The number of days and sequence of testing has varied over the years. ECFMG determines whether the score on a FLEX exam taken prior to June 1985 is acceptable for ECFMG certification. FLEX was administered for the last time to applicants for initial licensure in December 1993. (There was an administration in 1994 for those who have failed the exam and need to retake it.) This exam was primarily for medical licensure purposes and was never equivalent to the NBMEE Parts I and II for J-1 visa purposes.

The Educational Commission for Foreign Medical Graduates Examination (ECFMG exam) was a 1-day medical science examination administered by ECFMG twice a year from March 1958 through February 1984. A passing performance on this examination was acceptable for ECFMG certification and also for J-1 sponsorship prior to statutory change resulting from the Health Education Assistance Act of 1976. While the 1-day medical science examination remains valid for purposes of ECFMG certification, it does not meet examination requirements for a J-1 visa.

For further information on any of these exams and their applicability to clinical training or visas, contact ECFMG.

9.10.5.1.2 English language examinations. An English language proficiency test is required for J-1 clinical sponsorship and for ECFMG certification regardless of the individual's home country or native language.

ECFMG's English test is a multiple choice examination consisting of three sections, comprehension of spoken English, English structure, and vocabulary. This examination was administered with FMGEMS and is now administered by ECFMG with Step 2 of USMLE. One must take this exam at least once to qualify for ECFMG certification.

TOEFL is used by colleges and universities to evaluate English competence for admission purposes and is available internationally. Under certain conditions acceptable to ECFMG, TOEFL may be substituted for the ECFMG English test.

9.10.5.1.3 Examation exemptions. Exchange visitor alien physicians who fall into one of the following categories are not required to take the NBMEE Parts I and II or equivalent or the English exam for J-1 clinical training sponsorship:

- Those aliens who, on 9 January 1977, were doctors of medicine fully and permanently licensed to practice medicine in a state and who were practicing medicine in a state. (The term "state" means any state in the United States plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, as defined in Act 101[a][36].) Such alien doctors are considered to have passed the NBMEE Parts I and II. [PL 95-83, section 602, technical note to Act 212(a)(32)]
- Alien doctors who graduated from a school of medicine accredited by the Liaison Committee on Medical Education (LCME), regardless of whether the medical school is in the United States. In effect, this means aliens of any nationality who have graduated from a U.S. or Canadian medical school. [Act 212(a)(32); 22 CFR 514.27(b)(5)]
- Alien doctors who are considered to be of "national or international renown in the field of medicine." Such doctors are not considered to be alien physicians or foreign "graduates of a medical school" as defined in the Act, and would not normally be coming to the United States to undertake graduate medical education or training. [Act 101(a)(41)]

Regardless of exemption from the NBMEE Parts I and II for visa purposes, most states require ECFMG certification for full medical licensure and some require it for temporary, training, or "visiting faculty" licensure (see Sections 9.10.5.2 and 9.10.5.3). This means that even physicians of national or international renown may have to take the exam in order to participate in clinical activities in the United States. This situation most often affects H-1B, O, or permanent resident applicants.

- Alien physicians who are under the sponsorship of universities or medical centers on P-1 programs for the purpose of observation, consulting, teaching, or research involving no patient care or only incidental patient contact (see Sections 9.10.2 and 9.10.3). These individuals are not considered to be coming to the United States for the purpose of obtaining graduate medical education or training and are precluded from direct patient care. [22 CFR 514.27(c)]

9.10.5.2 ECFMG certification

An ECFMG certificate is obtained by passing medical science and English language exams acceptable to ECFMG and by providing acceptable documentation of medical education. The certificate confirms that a foreign medical graduate has met the basic requirements for admission to the U.S. system of medical training, licensure, and practice. It is not of itself, however, a guarantee of admission to any of these.

9.10.5.2.1 Reasons for ECFMG certification. ECFMG certification is required for four purposes:

1. ECFMG requires it before issuing the Form IAP-66 for J-1 sponsorship for clinical training.
2. The Accreditation Council on Graduate Medical Education (ACGME) requires that any accredited training program admit to training only those graduates of foreign schools who hold ECFMG certification. An accredited program can lose its accreditation if it admits noncertified foreign physicians.
3. Medicare reimbursement rules require that a health care facility which trains foreign medical graduates and bills Medicare for their services ensure that any such physicians hold valid unexpired ECFMG certification.
4. Many states require foreign medical graduates to hold ECFMG certification before admitting them to licensure exams or granting training or full licensure.

9.10.5.2.2 Exams and documentation. Various combinations of medical exams have been acceptable for certification (see Section 9.10.5.1). They include the ECFMG exam in its entirety; FLEX in its entirety; and a basic-science and a clinical-science combination of USMLE, NBMEE, FMGEMS, or VQE. The exams may be taken before graduation from medical school, but the ECFMG certificate is issued only after completion of medical education as defined by the country in which the medical education was received. For example, as of this writing, graduates of German medical schools receive a diploma after completion of classroom work, but the country requires that they complete a period of supervised training before declaring them to have completed their medical education. ECFMG certification is granted only after the supervised training is completed, and only after ECFMG certification is a German graduate eligible for acceptance into an accredited program and for ECFMG sponsorship for clinical training.

9.10.5.2.3 Validity of certificates. Certificates issued based on examinations taken on or after 1 January 1979 remain valid for 2 years and must be revalidated every 2 years by passing an English test. After the physician enters an accredited training program, ECFMG will make the certificate "valid indefinitely." Older certificates which carry no expiration date are considered to be valid indefinitely.

9.10.5.2.4 Exemptions from ECFMG certification. Graduates of medical schools accredited by the LCME are exempt from the requirement for ECFMG certification for any of the purposes stated in Section 9.10.5.2.1. Currently the LCME accredits only medical schools in the United States and Canada. This means that graduates of U.S. and Canadian medical schools, regardless of their nationality, are exempt from ECFMG certification. They may, however, need ECFMG sponsorship for clinical training in the United States.

9.10.5.3 Medical licensure

All states require some kind of recognition of the privilege to provide patient care. This recognition ranges from a full and unrestricted license to practice medicine independently to a host of temporary, training, visiting, institutional, and similar licenses or permissions for various levels of patient care. Each of the 50 states and the U.S. protectorates and commonwealths makes it own determinations as to the individuals who may provide patient care within its borders and the conditions and requirements for such permission. In most cases nationwide ECFMG certification is a first and basic requirement at almost all levels.

Completion of all three steps of the USMLE is a prerequisite to full unrestricted licensure, although certain combinations of older exams will be accepted during the exam transition period (see Section 9.10.5.1). States also establish requirements as to the range of courses taken in medical school, the number of months or years of training after graduation, moral character, history of substance abuse, prior involvement in malpractice litigation, and other conditions set by the state legislature and/or by the state licensing authority. States may change their requirements as they think appropriate, and only the state licensing authority is a reliable source of information on licensure requirements and availability in a state.

9.10.6 Transfer to and from ECFMG sponsorship

The general rules for transfer of program and change of category apply (see Sections 9.3.8 and 9.3.9). Alien physicians sponsored by ECFMG for clinical training are in the medical trainee category, while those sponsored by educational institutions for observation, consultation, teaching, or research are in the categories appropriate to the activities and approved for use by the sponsoring institution. In almost all cases, changing to or from ECFMG sponsorship will involve a change of category, and sufficient time must be allowed to obtain the necessary approval from USIA. ECFMG also is authorized to sponsor individuals for activities other than clinical training, and occasionally the transfer categories coincide. [22 CFR 514.41 and .42]

9.10.6.1 Transfer to the ECFMG trainee program from other programs

ECFMG does not encourage transfer to its program from P-1 programs, as such transfers are generally considered to entail a change in program objective. (See Section 9.10.3 for exceptions.) In a special notice dated August 1988, sent by ECFMG to directors of graduate medical education programs and others involved in the training and sponsorship of alien physicians, ECFMG indicated that requests for such transfers must be approved by USIA and that USIA generally will deny these requests unless "very unusual or extenuating circumstances exist." The notice further states that the interest of the exchange visitor research scholar will not be considered to be an unusual or extenuating circumstance.

9.10.6.2 Transfer from the ECFMG trainee program to other programs

ECFMG generally will not sign a Form IAP-66 for transfer that involves a change of objective or a change of category unless USIA approves that change in advance. Without the transfer authorization from ECFMG, the transfer notification is not valid for submission to the USIA processing center (see Section 9.3.8).

9.10.6.3 Departure from the United States and reentry on a new program

As discussed in Section 9.3.8, an individual may sometimes leave the United States, thus ending a current program, and apply for readmission on a new program. If a training institution files for initial sponsorship from ECFMG for a physician who is currently in an exchange visitor program, ECFMG will require evidence such as passport stamps or similar documents to show that the individual is indeed outside of the United States.

9.10.7 Limitation of stay

Section 212(j)(1)(D) of the Act limits participation in a graduate medical education or training program in the United States to 7 years or the normal length of time necessary for specialty or subspecialty board eligibility, whichever is less. Extensions beyond the training program limits may be obtained if an alien can demonstrate an exceptional need in the home country for the additional time and training.

Subject to the overall 7-year limit, the physician may change the specialty or subspecialty within the first 2 years of training. For example, a physician may start a program in medicine and before the end of the second year decide to change to radiology.

USIA may grant additional time for a physician to undertake training in a program for which no specialty or subspecialty board has been convened or constituted, to sit for board exams and obtain board certification, or to engage in supervised medical practice.

Specialty and subspecialty boards are not the same as the NBME. The NBME is concerned with general medical school education. The specialty and subspecialty boards are concerned with evaluating and accrediting training programs in specialized areas of medicine for physicians who have graduated from medical school.

ECFMG issues Form IAP-66 for a period of 1 year or less; therefore, at a minimum, annual extensions must be filed. Alien physicians in clinical training under ECFMG sponsorship must submit a request for continuation of sponsorship to ECFMG each year, and must include with the request a Form I-644 signed by the training program director confirming that the physician is in good standing in the program and signed by the physician reaffirming his or her intention to return home at the end of the training.

In the past ECFMG returned this form to the alien or the training program along with the Forms IAP-66 for submission to INS with the Form IAP-66. The Form I-644 is an INS form and, by statute, must be sent to INS. INS has determined that, under the new regulations, it must be retained in the file of the program sponsor. [INS Cable CO 214j-P, 9 July 1993]

Because ECFMG is the exchange visitor program sponsor for all physicians who need to complete a Form I-644, the form will be retained by ECFMG. Only the Form IAP-66 will be sent to the alien or to the training program for notification extensions. [22 CFR 514.27(e)]

9.10.8 Applicability of the 2-year home country physical presence requirement

All foreign medical graduates who began training programs under ECFMG sponsorship on or after 10 January 1977 are subject to the 2-year home country physical presence requirement. This applies regardless of the absence of government funding or absence or inapplicability of the skills list. They are not eligible to apply for a waiver of the 2-year home country physical presence requirement on the basis of a "no objection statement" from the home government. (See Section 9.14.) [22 CFR 514.27(g); Act 212(e)]

9.10.9 Other visa options for physicians

Graduation from medical school is in most instances the same as holding an advanced degree. For physicians who will not have patient care responsibilities all the options available to Ph.D. holders are available. Similarly, these options may be available to faculty in clinical departments who are engaged primarily in teaching and research and whose patient care is incidental to that teaching and research. These options include, but are not limited to, H-1B, TC, O, and permanent residence (see Sections 10, 12, and 6 respectively).

ECFMG sponsorship is the most common avenue for clinical training, but the H-1B is also available for those who can meet the additional requirements. In the case of foreign national graduates of U.S. medical schools, F-1 practical training or J-1 academic training is an option (see Section 4.9.3.2). A graduate of a foreign medical school who receives a U.S. Ph.D. may not use the postdoctoral practical or academic training for graduate medical education or training since medicine was not the field of study in which the Ph.D. was received. The Ph.D. may be awarded in a medically related science field, but that degree does not qualify one to practice medicine.

9.11 OTHER CATEGORIES OF EXCHANGE VISITOR ACTIVITIES

Other categories of exchange visitor activities are authorized in the regulations but may not be used directly by colleges and universities. Some are restricted to use by certain kinds of sponsors. The other categories include teachers in primary and secondary schools; secondary school students; international visitors (restricted to use by USIA); government visitors (restricted to use by federal, state, and local government agencies); camp counselors (generally used only by private organizations which facilitate such exchanges); and participants in summer student travel/work programs.

Individuals sponsored on these programs may have reason to participate in activities on the college or university campus. For example, a teacher might take a course or help to teach a course, a secondary school student might be part of a high school enrichment program in cooperation with local colleges, international and government visitors might visit the campus as part of their exchange, or camp counselors might spend time on campus with U.S. college students in preparation for the counseling activities. A participant in the summer student work/travel program might spend some time before returning home exploring educational opportunities and visiting campuses in the United States. In all of these cases, the responsible officer for the respective program would have the responsibility for ensuring that these activities were in keeping with the goals and parameters of the sponsored exchange.

More important than the occasional or tangential associations between college and university programs and exchange visitors in other categories is the tremendous reciprocity of exchanges which these programs permit and encourage. By providing training and cultural experiences in the United States for a broad range of foreign nationals, these programs help to create acceptance abroad for U.S. students and scholars who seek similar kinds of experiences.

9.12 Visa Application and Initial Admission to the United States

9.12.1 Aliens subject to passport and visa requirements

Most aliens are required to have a valid passport and visa to enter the United States (for exceptions, see Section 9.12.2).

An alien documented as an exchange visitor should be instructed by the responsible officer to apply for a J-1 exchange visitor visa at the U.S. consulate or embassy having jurisdiction over his or her place of residence. In theory, an individual may apply for a visa at any consular post in the world. In practice, the administrative officer at that post may accept or refuse to accept applications from individuals residing outside the jurisdiction of that post.

The applicant must present to the consular officer a valid passport and a properly executed Form IAP-66, which the applicant has completed and signed on the back of the first (white) and third (pink) copies. The applicant also will be required to present other documents that may be requested by the consular officer to establish that the applicant is a bona fide nonimmigrant exchange visitor, has adequate financial support, and meets all of the other requirements for exchange visitor status, including having a residence abroad that he or she has no intention of abandoning.

If the consular officer approves the visa application, he or she will stamp the visa in the alien's passport and note the period of validity of the visa and the number of entries for which the visa is valid. The consular officer also will note in the space on the lower left corner of Form IAP-66 whether, in his or her judgment, the exchange visitor is subject to the 2-year home country physical presence requirement. The notation is a preliminary finding; USIA will make the final determination. The consular officer then will return all three copies of the Form IAP-66 to the exchange visitor.

Upon arrival at the U.S. port of entry, the alien will present the passport, visa, and all three copies of Form IAP-66 to an immigration officer. If the applicant is found to be admissible to the United States, the immigration officer will return to him or her the third (pink) copy of Form IAP-66. The officer will send the first (white) copy to the INS office having jurisdiction over the exchange visitor's intended place of temporary stay and the second (yellow) copy to USIA. The officer will annotate and return to the exchange visitor Form I-94 (Arrival/Departure Record), on which the immigration officer will have entered the date and place of the alien's admission to the United States, the immigration classification (J-1 for exchange visitor and J-2 for dependents), and the abbreviation "D/S" which stands for "duration of status." [INS cable CO 214j-P, 9 July 1993]

The exchange visitor has by this process been "examined" and lawfully admitted to the United States. The authorized stay will be for the period indicated in item 3 of Form IAP-66, plus 30 days as a grace period in which to depart the United States. [8 CFR 214.2(j)]

See also Sections 2.2.4 and 2.3.2.

9.12.2 Aliens not subject to passport and visa requirements

Certain aliens are not required to have a valid passport or visa for entry to the United States. The most common examples are Canadian citizens, landed immigrants of Canada having a common nationality with Canadians, and citizens of the Federated States of Micronesia and the Republic of the Marshall Islands (see Sections 2.2.4 and 2.3.2). Such an alien should be instructed to apply directly to an immigration officer at a U.S. port of entry for admission as a J-1 exchange visitor, bypassing the procedure of applying for a visa. The procedure at entry is the same as that described above in Section 9.12.1, except that the applicant is not required to present either a passport or a visa. (Note: Canadians who enter the United States from outside the Western Hemisphere must have passports; they are not required to have visas. [8 CFR 212.1(a)])

9.12.3 Temporary admission with Form I-515

Sometimes an alien will have lost or misplaced Form IAP-66 or for other reasons be unable to produce that form at the port of entry. In such a case, if the immigration officer determines that the applicant for entry has a valid J-1 visa and is qualified in all other respects for admission as an exchange visitor, the officer may admit the alien to the United States in exchange visitor status for a period of 30 days and issue Form I-515 (Notice to Student or Exchange Visitor). That form instructs the exchange visitor to submit Form I-539 with the appropriate fee and current and valid Forms IAP-66 and I-94 by mail to the INS office having jurisdiction over his or her place of activity . Upon receipt of these forms, the INS office will convert the date on Form I-94 to duration of status by striking out the date and writing "D/S." The valid IAP-66 and original I-94 should be submitted so that the I-94 can be marked "D/S."

If the immigration officer at the port of entry is not able to determine that the applicant is eligible for admission as an exchange visitor, the officer may parole the alien into the United States for "deferred inspection," which requires that the alien report in person to an INS office (see Section 10.2.3).

9.13 TRAVEL ABROAD AND REENTRY

An exchange visitor who wishes to make a temporary visit outside the United States and return to complete his or her program must be sure to have the proper documents to enter the country to be visited and to reenter the United States.

9.13.1 Entering another country

If the exchange visitor wishes to travel to his or her country of citizenship or permanent residence, a valid passport or travel document will ensure entry. For travel to another country, it may be necessary to secure a visa or entry permit. Those wishing to visit other countries should contact the consulate or embassy of the country to be visited to determine what documents are necessary for entry. Appendix 10 contains information regarding the necessity of having a visa to enter Canada from the United States.

9.13.2 Reentering the United States

An exchange visitor making a temporary visit outside the United States must have the following documents in order to reenter the United States in exchange visitor status: a valid passport and visa (unless exempt from passport and visa requirement—see Section 9.12.2) and a current third (pink) copy of Form IAP-66 signed on the reverse by the responsible officer or alternate to affirm that the exchange visitor is in status. If the exchange visitor has lost the pink copy of Form IAP-66, the program sponsor may issue a duplicate of the original form.

There is no regulatory basis or guidance for endorsing the back of the pink copy of the Form IAP-66. That section was added to the form under a prior change in regulations which permitted the sponsor to issue the Form IAP-66 for longer than a year. Consular and immigration officers are now accustomed to seeing it. Interestingly, the section only has space for a beginning and ending date and a signature. Many responsible officers add a date at the end of the signature. Absent regulatory guidance, many sponsors of exchange visitor programs have adopted the F-1 concept that the IAP-66 should be recognized as valid for travel for 1 year from the date of the signature or until the ending date on the IAP-66, whichever comes first. NAFSA has, at USIA's invitation, suggested language to that effect which USIA may incorporate into future rulemaking. By signing the revalidation section the responsible officer is confirming that the exchange visitor is in status. Responsible officers may choose to take this opportunity to verify insurance compliance (see Section 9.2.7.2.3).

If the exchange visitor's visa is no longer valid, or if the number of authorized entries has already been used, he or she must apply to a U.S. consulate or embassy outside the United States for a new visa (unless the alien is eligible for automatic extension of the visa—see Section 9.13.4). For this purpose, the pink copy of Form IAP-66 is acceptable to some consular officers. While use of the pink copy for issuance of a new visa is recognized in the *Foreign Affairs Manual* (9 FAM 41.62, Note 3), it is advisable for the program sponsor to provide a complete new Form IAP-66 in order to avoid possible difficulties at the consulate. Inconsistency in consular processing is of significant consequence to sponsors and exchange visitors. The Department of State is aware of the difficulties it causes. NAFSA is discussing this issue with the Department of State, which plans to include it in future training for consular officers.

9.13.3 Advance notification (formerly preauthorization of visas)

Under certain circumstances, J-1 exchange visitors whose visas have expired and who intend to pay temporary visits abroad can request the Department of State to process necessary special clearances in advance of the travel, thus significantly reducing the processing time for actual issuance of the visa. This procedure is known as advance notification.

The instructions state that advance notification is administered exclusively on a case-by-case basis only to foreign nationals falling within the two following groups. Applications not meeting the criteria set forth below will not be considered for advance notification processing.

- Category 1: [Soviet, and PRC] nationals requiring special clearances who have expired visas and who are required to travel abroad other than to their home country for a brief period (commonly a week or less) and for a specific purpose, such as to attend a conference, symposium, or panel, or present an academic paper, or collaborate on research and [Lebanese and Eastern European] nationals requiring special clearances who have expired visas and are required to travel home;
- Category 2: foreign nationals requiring special clearances who have expired visas and who are able to demonstrate compelling humanitarian circumstances necessitating advance notification. The service is not available to nationals of countries with which the United States does not have diplomatic relations.

The effect of advance notification is to notify the consular post that the individual will be applying for a visa, that there are no objections to issuance of the visa from the Department of State or other U.S. government agencies, and that, in the case of a visa application being made in a third country, there are no objections from the U.S. consular post in the applicant's own country. Advance notification does not guarantee that a visa will be issued; it simply expedites certain clearances.

Application for advance notification is made to the Visa Office, CA/VO/L/C, Room 1343, Department of State, Washington, DC 20520-0113. The Visa Office offers the courtesy of providing a form, but the applicant may simply provide the following required information: name and sex of the student, date and place of birth, occupation in home country, employer in home country, purpose of visit abroad, date of departure from the United States, date of return to the United States, U.S. consulate/embassy where applicant will apply for a visa, remaining authorized length of stay in the United States upon return from this trip, and description of reasons for severe hardship or humanitarian concern (if applicable).

Relevant required attachments are a photocopy of an expired U.S. visa, a photocopy of Form I-94, a photocopy of the old and new Form IAP-66, a letter and evidence documenting business travel, professional travel, severe hardship, or humanitarian concern.

The student going to a third country should apply to the appropriate embassy or consulate in the United States for a visa for that country. If the individual has any difficulty in obtaining a visitor visa for a third country, the adviser should call the Visa Office of the Department of State at (202) 663-1201.

9.13.4 Automatic extension of visas

An exchange visitor's visa may be considered to be automatically extended (previously referred to as automatic revalidation) upon application for readmission to the United States (and therefore the visa in the passport need not have a current expiration date) provided the exchange visitor

- is applying for readmission to the United States after a temporary absence of not more than 30 days, during which time he or she has been "solely in contiguous territory or adjacent islands other than Cuba" (Canada, Mexico, or the Caribbean islands other than Cuba);
- has maintained and intends to resume status as an exchange visitor, and the previously authorized stay is valid at the time of reentry;
- presents either a currently valid Form I-94 or a valid pink copy of Form IAP-66, noted in item 3 to show the expiration date of the authorized stay and endorsed on the back by the responsible officer;
- has a valid passport; and
- does not require the authorization of temporary admission to the United States under section 212(d)(3) of the Act (a provision for waiver of grounds of excludability—see Section 14.5). Furthermore, an alien who entered the United States in a classification other than exchange visitor but whose status was subsequently changed to exchange visitor may be considered to have his or her previous visa automatically extended and converted to an exchange visitor visa if he or she meets the criteria stated above. Thus, under these circumstances, an exchange visitor whose visa has expired may be saved the necessity of applying for a new or extended visa at a consular post outside the United States. [22 CFR 41.112(d) and 8 CFR 214.1(b)]

Two notes of caution. The third criterion above reflects regulatory language that states that a Form I-94 or a Form IAP-66 is acceptable and that both are not required. In practice, however, individuals carrying only one and not the other may have difficulty entering the countries in contiguous territory or adjacent islands and may have difficulty returning to the United States. None of these automatic extension or conversion rules apply if the visa in the passport has been canceled or invalidated or contains specific language limiting the use of the visa, or if the passport is issued by a country with which the United States has no diplomatic relations. The automatic extension rules also do not apply to individuals who are out of status in the United States. Further, if an individual who is out of status presents documents to an unwitting INS officer to reenter under automatic extension, this would be considered visa fraud.

9.13.5 Aliens not subject to passport and visa requirements

Exchange visitors who are not subject to passport and visa requirements (see Sections 2.2.4 and 2.3.2) need have only a valid, properly endorsed, current pink copy of Form IAP-66 to reenter the United States after a temporary absence.

9.14 TWO-YEAR HOME COUNTRY PHYSICAL PRESENCE REQUIREMENT

The 2-year home country physical presence requirement is one of the most important special characteristics of exchange visitor status and should be thoroughly understood by the program sponsor and by each exchange visitor. [22 CFR 514.44]

9.14.1 Definition and applicability

Certain exchange visitors are not eligible for permanent resident, H temporary worker or trainee, or L intracompany transferee status in the United States until they have resided and been physically present in their country of nationality or last legal permanent residence for a total of at least 2 years following departure from the United States. With certain exceptions for diplomats, they are also not permitted to change nonimmigrant status in the United States (see Section 9.15.2). These restrictions apply to an exchange visitor

(1) whose participation in the program for which he came to the United States was financed in whole or part, directly or indirectly, by an agency of the U.S. government or by the government of the country of his nationality or last legal permanent residence;

(2) who, at the time of admission or acquisition of [exchange visitor status] was a national or resident of a country which the director of United States Information Agency, pursuant to regulations prescribed by him, designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged; or

(3) who came to the United States or acquired

exchange visitor status in order to receive graduate medical education or training. [Act 212(e)]

9.14.1.1 Government financing

"Financed directly" means financed in whole or part by the United States Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with an exchange visitor program.

"Financed indirectly" means (1) financed by an international organization, with funds contributed by either the United States or the exchange visitor's government for use in financing international educational and cultural exchange, or (2) financed by an organization or institution, with funds made available by either the United States or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.

"Exchange visitor's government" means the government of the country of the exchange visitor's nationality or the country where the exchange visitor has a legal permanent residence.

Thus, an exchange visitor is considered to be directly or indirectly financed by the United States or the home government only if the funds are made available for the specific purpose of participating in an international educational or cultural exchange program. A student on a research assistantship or grant, the funds for which were made available to the institution by the U.S. government for another purpose (such as the accomplishment of a specific research goal), is not considered to be financed either directly or indirectly by the U.S. government, for the funds were not provided specifically for the purpose of exchange. In such a case, Form IAP-66 should show that funding is from the institution, not from the government. [22 CFR 514.2]

9.14.1.2 Exchange Visitor Skills List

The determination as to whether an exchange visitor is subject to the 2-year home country physical presence requirement by virtue of the need for his or her specialized knowledge or skills in the home country is made by reference to the Exchange Visitor Skills List, an official list of fields of specialized knowledge and skills needed in each country, as determined by the governments of those countries.

The exchange visitor is subject to the 2-year home country physical presence requirement only if participation in an exchange program began after his or her field of study appeared on the skills list. The Exchange Visitor Skills List was originally published in the *Federal Register* on 25 April 1972. It was revised on 10 February 1978, 12 June 1984, 30 September 1986, 5 February 1987, 19 March 1987, 1 April 1987, 16 December 1988, and 28 July 1993.

The dissolution of the Soviet Union, the subsequent partitioning of some of the former countries of Eastern Europe, and the emergence of new countries has made parts of the skills list meaningless or uninterpretable. In addition sponsors and members of Congress have voiced concerns that the "no objection letter" (see Section 9.14.2.4) is *pro forma* in some countries, while other countries subvert the intent of the skills list by using it as a political means of controlling the emigration of their citizens or of extracting funds from their citizens.

USIA plans to revise the list. The revision will be a lengthy process requiring direct correspondence with all countries, consideration by the appropriate authorities of those countries, and formal notification to USIA. When in doubt about the applicability of the skills list, request an advisory opinion from USIA.

9.14.1.3 Foreign medical graduates or alien physicians

All alien physicians (Section 9.10.1.1) who obtained exchange visitor status after 10 January 1977 and came to the United States or acquired exchange visitor status for the purpose of obtaining graduate medical education or training (Section 9.10.1.2) are subject to the 2-year home country physical presence requirement. [Act 212(e)]

9.14.2 Waiver of the 2-year home country physical presence requirement

The 2-year home country physical presence requirement may be waived for any one of the following four reasons. [Act 212(e)]

9.14.2.1 Exceptional hardship

The 2-year home country physical presence requirement may be waived if the applicant can demonstrate that exceptional hardship to a U.S. citizen or U.S. permanent resident spouse or child of the exchange visitor would be caused by the exchange visitor's departure from the United States and residence abroad. An application for a waiver on this ground is filed by the exchange visitor on Form I-612 with the INS office having jurisdiction over his or her place of temporary residence in the United States. The term "exceptional hardship" is interpreted quite strictly. The exchange visitor must demonstrate that the requirement will impose exceptional hardship on the U.S. citizen or permanent resident spouse or child if he or she must accompany the exchange visitor to the home country and that some genuinely exceptional hardship to the spouse or child will result from the exchange visitor's residence abroad which leaves the spouse or child alone in the United States. Examples include inability to obtain necessary medical treatment abroad for an illness or subjection of the spouse or child to persecution or discrimination abroad.

Factors such as a shortage of employment opportunities for the spouse, the spouse's limited command of the exchange visitor's native language, or the children's separation from their grandparents are not considered to entail "exceptional hardship."

Should the exchange visitor return home and the spouse or child remain in the United States, the separation of the exchange visitor from his or her citizen or resident spouse or child for the 2-year period is not necessarily a hardship; this is viewed as similar to the situation encountered by the families of U.S. military and consular personnel.

If INS finds exceptional hardship, the application and supporting evidence is forwarded to the Waiver Review Branch, Exchange Visitor Program Services Office, USIA, for a recommendation. If USIA recommends favorably, INS may, and normally will, grant the waiver. If USIA recommends against the waiver, it cannot be granted, for the Act requires a favorable recommendation by USIA. [22 CFR 514.44(b)]

9.14.2.2 *Persecution*

A second reason for waiver of the 2-year home country physical presence requirement is that return would subject the exchange visitor to persecution because of race, religion, or political opinion. Applications for waiver on these grounds are filed on Form I-612 and processed in the same manner as exceptional hardship cases.

The exchange visitor must present substantial evidence of the probability of genuine persecution upon return home. Hardship, lack of opportunity to advance in a profession, or similar prospective difficulties usually are not sufficient grounds for recommending a waiver based on a claim of persecution. Cases where INS finds grounds for fear of persecution are referred to USIA, which in turn refers them to the Department of State's Bureau of Human Rights and Humanitarian Affairs. In cases where the Department of State finds a legitimate basis for fear of persecution, USIA recommends the waiver.

Section 212(e) of the Act provides for the possibility of a waiver if the exchange visitor will be subject to persecution because of "race, religion, or political opinion." This is more restrictive than the definition of a refugee found in section 101(a)(42)(A) of the Act. That definition extends to include "nationality" or "membership of a particular social group." As a result, the finding of persecution by INS sufficient for refugee status may not equate to a finding of persecution by USIA as that term is used in the context of a waiver. [22 CFR 514.44(b)]

9.14.2.3 *Interest of a U.S. government agency*

If an exchange visitor is engaged in a program for or of interest to a U.S. government agency, the head of that agency or designee may apply to the Waiver Review Branch, Exchange Visitor Program Services Office, USIA, for a waiver of the 2-year home country physical presence requirement on the grounds that the granting of the waiver would be in the public interest and that the exchange visitor's absence from the United States would be clearly detrimental to a program or activity of interest to that agency. In such cases, the application is made by the government agency interested in the services of the exchange visitor and not by the exchange visitor. The waiver can be granted by INS on the recommendation of USIA. Such waivers are granted only in the interest of the agency involved, not in the interest of the exchange visitor. Any U.S. federal government agency may apply for a waiver.

In addition, as of October 1994, certain state government agencies may also apply for a waiver. Several restrictions must first be met, however. First, the country to which the alien is contractually obligated to return must provide USIA with a "statement of no objection." Second, the alien physician must possess an offer of full-time employment at a health facility and must agree to begin work within 90 days of receiving the waiver. Third, the alien must further agree that barring extenuating circumstances he or she will remain employed at the same health facility for a minimum of three years. Fourth, the health facility itself must be located within a region designated by the secretary of health and human services as having a shortage of health-care professionals. Violations of these requirements would again subject the alien to the home-residency requirement. This provision expires 1 June 1996. [PL 103-416, 25 October 1994]

HHS or the Department of Education may serve as the interested government agency for an alien whose potential scientific, educational, or cultural contributions to the United States might be such that it would be in the public interest to grant a waiver. The waiver review boards of these two departments do not recommend waivers frequently. Institutions may find it useful, however, to refer waiver cases to them when the alien involved is not directly employed in a U.S. government program but is important enough that his or her presence could be judged to be in the public interest and that his or her absence from the United States for 2 years would be detrimental to the public interest. Such referrals must come from the institution, not from the exchange visitor.

HHS is concerned with aliens who are in the health, biomedical, and welfare fields. Requests for waivers in these fields may be submitted by private or nonfederal institutions, organizations, or agencies, or by a component of HHS to the department.

The Department of Education is concerned with waivers in general educational fields. Such waiver requests may be submitted by the institution or organization in which the exchange visitor is employed to the Department of Education. Contact the respective departments for current forms, instructions, and criteria for waiver application, or consult the *Federal Register* of 16 March 1984 (Department of Health and Human Services), and Title 34 of the *Code of Federal Regulations*, Part 50 (Department of Education).

In a case involving a request of an interested U.S. government agency in which the recommendation of the Waiver Review Branch is unfavorable, the case will be referred to the Exchange Visitor Waiver Board (see Section 9.14.2.5). [22 CFR 514.44(c)]

9.14.2.4 Statement of no objection from home country

A waiver also may be granted if the home country of the exchange visitor provides a statement of no objection to the exchange visitor's remaining in the United States, and USIA agrees that a waiver is justified. The home country's statement must be sent to the director of USIA

> through diplomatic channels, i.e., from the Foreign Office to the Agency through the U.S. mission in the foreign country concerned, or through the country's head of mission or duly appointed designee in the United States to the Director in the form of a diplomatic note. [22 CFR 514.44(d)]

Upon receipt of a statement of no objection for a particular exchange visitor, USIA will send the exchange visitor a "data sheet" on which the following information is requested: full name, place and date of birth, present address in the United States or last address in the United States prior to departure, list of exchange visitor programs in which the alien participated, alien registration number (if known), name of the foreign government official with whom the case can be discussed if necessary, and specific reasons for not wishing to fulfill the 2-year home country physical presence requirement. The exchange visitor must provide the information to the Waiver Review Branch, Exchange Visitor Program Services Office, USIA.

Exchange visitors who have received U.S. government funding from USIA that exceeds $2,000 are seldom granted waivers on the basis of a statement of no objection. USIA usually takes the position that U.S. government funding requires the return home of the exchange visitor in order to fulfill the goals of the program that funded the exchange visitor. Waivers based on "no objection" statements may be recommended if the exchange visitor received less than $2,000 in U.S. government funds from USIA. [Memorandum from USIA deputy general counsel dated 25 September 1986—see *Interpreter Releases*, 26 May 1987] Government funding of less than $2,000 often occurs with Fulbright scholars who receive only travel grants and no other support.

A foreign medical graduate or alien physician who acquired exchange visitor status on or after 10 January 1977 for the purpose of obtaining graduate medical education or training is not eligible to apply for a waiver of the 2-year home country physical presence requirement on the basis of a "no objection" statement. [Act 212(e); 22 CFR 514.44(a)(3)]

In all cases, a decision whether to recommend a waiver is based on an examination of the reasons for the waiver request weighed against the program, policy, and foreign relations aspects of the case. [22 CFR 514.44(d)]

9.14.2.5 Exchange Visitor Waiver Review Board

The Exchange Visitor Waiver Review Board, the membership and composition of which are specified at 22 CFR 514.44(f), provides a mechanism for thorough and equitable review of waiver applications when there is disagreement between concerned U.S. government agencies as to whether the waiver should be granted or when waiver cases seem unusually significant, sensitive, or controversial.

Cases referred to the Exchange Visitor Waiver Review Board are those (1) involving requests of interested U.S. government agencies when the recommendation of the Waiver Review Branch is unfavorable; (2) in which another federal agency has opposed the waiver in writing and the Waiver Review Branch recommendation is favorable; (3) in which a "no objection" letter has been issued by the government of the exchange visitor's country of nationality or last legal residence, and the exchange visitor has received funding, directly or indirectly, from the U.S. government in an amount under $2,000, and the Waiver Review Branch recommendation is unfavorable, except for an exchange visitor who received graduate medical education; (4) involving a claim of probable persecution in which the Department of State has provided USIA with a written opinion that the claim is without basis, and the Waiver Review Branch recommendation is favorable; and (5) in which for any reason the Waiver Review Branch requests a review of its recommendation. The recommendation of the Exchange Visitor Waiver Board constitutes the final recommendation of USIA. [22 CFR 514.44(f)]

The $2,000 referred to in number 3 above and the option for waiver which it permits is often referred to as the *de minimus* rule. "In calculating exchange funding the Agency must include both funds paid directly to a participant as well as funds paid by the Agency on behalf of the participant. Simply put, funds which are directly traced to the cost of a given exchange must necessarily be counted in the application of this rule." [USIA reply to NAFSA letter of 10 February 1994] In practical terms this means that a $500 travel grant and $1,600 worth of insurance coverage exceeds the $2,000 limit by $100 and closes this option for waiver.

9.14.2.6 Effect of waiver on J-1 status (see Section 9.2.3.4.2 and Appendix 13)

9.15 TAXES

9.15.1 Income tax

Earnings from J-1 employment, including income from assistantships, are usually subject to federal, state, and local income taxes. Additional information on J-1 federal income tax obligations may be found in Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 515, "U.S. Tax Guide for Aliens" (see Appendix 8). All J-1 nonimmigrants must file an income tax return (Form 1040 NR) regardless of whether they have earned any income in the United States.

9.15.2 Social Security tax

Prior to the Tax Reform Act of 1984, and subsequent regulations promulgated 27 April 1992, contributions for Social Security (FICA tax) were not to be withheld from wages of nonimmigrant J-1 aliens if the employment was authorized. Recent changes in the regulations, however, make J-1 aliens subject to FICA tax withholding if they are "residents for tax purposes." Generally, J-1 students become "residents" for tax purposes after they have been in the United States for 5 years. J-1 professors and researchers become "residents" after 2 years. The April 1992 regulations were retroactive to 1 January 1985, the effective date of the 1984 law. [*Federal Register*, 27 April 1992, p. 15237]

9.15.3 Sailing permit (Certificate of Compliance)

A J-1 student or J-2 dependents may be required to obtain a "sailing permit," known formally as a Certificate of Compliance with Income Tax Laws by Departing Aliens, from the Internal Revenue Service prior to leaving the United States for destinations other than Canada or Mexico. This certificate, which demonstrates that the J-1 student has met all federal income-tax obligations, is issued on Internal Revenue Service Form 1040C or 2063. No sailing permit is needed if the student or dependent, while in J-1 or J-2 status, respectively, received no gross income from sources inside the United States ... other than (1) Allowances to cover expenses incident to study in the United States (including expenses for travel, maintenance, and tuition), (2) The value of any services or accommodations furnished incident to such study, (3) Income derived in accordance with the employment authorizations at 8 CFR 274a.12 (b) and (c), or (4) Interest on deposits described in section 871(i)(2)(A) of the Internal Revenue Code. [26 CFR 1.6851-2T(2)(ii), *Federal Register*, 3 March 1994, p. 10066] For further information, consult Internal Revenue Service publications 515, "Withholding on Nonresident Aliens and Foreign Corporations," and 519, "U.S. Tax Guide for Aliens" (see Appendix 8).

9.16 CHANGE OF STATUS

9.16.1 Change to exchange visitor status

Aliens holding nonimmigrant status C, D, or K (transit, crewman, fiancee or fiancé) or admitted as a visitor for pleasure or a visitor for business under the visa waiver pilot program are not eligible for change to exchange visitor status. Aliens in other nonimmigrant classifications may change to any other visa classes for which they qualify. To apply for change of status, the alien must submit to the appropriate INS service center properly completed Forms IAP-66, I-539, and a copy of Form I-94 along with the required fee. The regulations at 8 CFR 248.3 provide for waiver of forms and fees in some cases involving diplomatic- or government-sponsored changes and for changes within a visa class such as J-1 to J-2. However, the Form I-539 provides for no such waiver. INS is in the process of reconciling the differences between the form and the regulations.

The alien must be in good standing in his or her present status in order to be eligible to apply for a change of status. If the change of status is approved, a new Form I-94 will be generated, and it and the pink copy of Form IAP-66 will be noted D/S and returned to the address on the Form I-539. Dependents may be included in the principal's request for change of status and new Forms I-94 will be issued to them as well.

In any application for change of status, the alien must explain satisfactorily why he or she did not originally enter the United States in the status for which he or she is applying. A change of circumstances or intention must be documented or explained to make the application acceptable. INS generally will deny a request by an F-1 student to change to exchange visitor student status if the adjudicating officer believes that the reason for the change is solely or principally to enable the dependents to apply for permission to accept employment. [8 CFR 248]

9.16.2 Change from exchange visitor status to another nonimmigrant status

An exchange visitor's eligibility to change to another nonimmigrant status may be limited. If the exchange visitor did not come to the United States to receive graduate medical education or training, is not subject to the 2-year home country physical presence requirement, or has had that requirement waived, he or she may apply for change to any other nonimmigrant status for which he or she is qualified. If the exchange visitor is subject to the 2-year home country physical presence requirement, he or she is eligible to change only to A (diplomatic or government official) or G (international organization) status, provided that he or she is accredited by the foreign government or international organization to the Department of State. If the exchange visitor was admitted in or acquired J-1 status for the purpose of obtaining graduate medical education or training, he or she is ineligible for any change of nonimmigrant status, even if the exchange visitor was not subject to or has received a waiver of the 2-year home country physical presence requirement of section 212(e) of the Act. [Act 248; 8 CFR 248.2]

An alien outside the United States who previously had been in the United States as an exchange visitor may apply for a different nonimmigrant visa at a U.S. embassy or consulate. Authority to grant such a visa lies within the discretionary power of the consular officer. No minimum time abroad is required to obtain a different visa unless the former exchange visitor is subject to the 2-year home country physical presence requirement, in which case he or she must satisfy that requirement or have it waived before being eligible for an immigrant, H, or L visa. Returning to the United States in another status does not absolve the alien from a previously incurred 2-year home country physical presence requirement.

An exchange visitor who is eligible to apply for change of status does so by submitting to INS the Form I-539, a copy of Form I-94, the required fee, and such other documentation sufficient to demonstrate eligibility for the new status. For certain visa classes such as H or O (see Sections 6 and 10) Form I-129 with appropriate fee may be required in place of or in addition to Form I-539. [8 CFR 248.3]

INS and USIA generally do not look favorably on a request by a J-1 exchange visitor to change to J-2 dependent status, since the J-1 exchange visitor is expected to return home immediately upon completing the exchange visitor program in the United States. (See Section 9.16.8.) Such requests usually are either denied or referred to USIA. An alien who wishes to request such a change of status should submit to INS his or her Form I-94, Form I-94 and the pink copy of Form IAP-66 of the principal J-1 alien whose dependent he or she will be, Form I-539 with appropriate fee, information about passport validity, and a letter explaining the reasons for the requested change and justifying the extended period of stay in the United States.) For change from J-2 to J-1 status, see Section 9.16.8. [8 CFR 248]

9.16.3 Adjustment of status to permanent resident

An exchange visitor may adjust status to that of a permanent resident only if he or she is not subject to the 2-year home country physical presence requirement or if that requirement has been waived, and if he or she otherwise meets the requirements of section 245 of the Act. Qualifications and procedures for such an adjustment of status are described in Section 13. [8 CFR 245]

9.17 DEPENDENTS OF EXCHANGE VISITORS

The spouse and unmarried minor children of a J-1 exchange visitor who accompany or follow to join the principal participant to the United States are usually admitted in J-2 classification, but they are not exchange visitors (see Section 9.1.1.1). Occasionally family members enter in other visa classes such as visitors, students, or temporary workers. Participants are not permitted to bring dependents to the United States in J-2 classification if adequate funding for their support and health insurance coverage is not available. They should be discouraged from bringing family in any other visa class if funding is inadequate.

9.17.1 Eligibility requirements

Only the spouse and unmarried minor children (under 21 years of age) of the exchange visitor are eligible for J-2 status. [22 CFR 514.2] Other family members, such as parents, brothers, and sisters, are not eligible. Further, J-2 documentation for family members can only be issued if the principal can show funding for their support and health care (see Sections 9.2.5 and 9.2.7.1).

9.17.2 Issuance of Form IAP-66

If the J-2 dependents are to accompany the J-1 exchange visitor to the United States, they may obtain their visas and admission to the United States along with the principal participant on the basis of Form IAP-66 issued to the principal exchange visitor. If the dependents follow the J-1 exchange visitor to the United States, they must obtain from the responsible officer another Form IAP-66 issued in the name of the principal participant. This duplicate Form IAP-66 must be an exact copy of the original form, except that the purpose should be to "permit visitor's immediate family to enter United States separately" checked in the box in the upper right-hand corner. The current IAP-66 requires in section 3 the expiration date on the exchange visitor's Form I-94. The current date of issue is entered in item 7. Although this is no longer relevant, the notation D/S may be entered here.

Exchange Visitor Program Services Office instructions to responsible officers state that applicants for J-2 visas or entry also must be provided with a written statement on the program sponsor's letterhead giving the names, dates and places of birth, relationships, and nationalities of each of the family members. The supplying of such family information indicates approval by the program sponsor of the family members coming to the United States in J-2 status. In practice, however, consular officers often issue J-2 visas, and immigration officers admit family members to the United States in J-2 status without such a statement. Therefore, responsible officers are limited in the degree of control they have over whether family members accompany exchange visitors to the United States. Program sponsors do have some control over whether family members follow to join the principal participant, as a duplicate Form IAP-66 must be issued for that purpose.

The element of control is important, for program sponsors should assume the responsibility of verifying the source and amount of financial support for dependents. The responsible officer should issue sponsorship documents for family members only after determining that financing for the family's support and required health insurance is adequate.

9.17.3 Obtaining a J-2 visa and entering the United States

Dependents who will accompany the principal exchange visitor to the United States obtain their J-2 visas and enter the United States in J-2 status along with the J-1 exchange visitor on the basis of the single, original Form IAP-66 and the written statement of their identities issued by the program sponsor. Dependents who follow to join the principal participant in the United States and who do not already have J-2 visa stamps must present the duplicate Form IAP-66 referred to above and the statement of identity issued by the program sponsor to the appropriate U.S. consular officer to apply for J-2 visas. All three copies of the Form IAP-66 are returned by the consular officer to the J-2 applicant, who then presents Form IAP-66 to the immigration officer at the port of entry to the United States. Upon entry to the United States, each dependent is issued Form I-94 (Arrival/Departure Record), indicating the date of entry, classification, and an admission for D/S.

Nationals of certain countries who are exempt from passport and visa requirements (see Section 9.12.2) may bypass the visa application process and apply for admission in J-2 status at a U.S. port of entry with only the duplicate Form IAP-66 and statement of identity provided by the program sponsor.

9.17.4 Employment of J-2 dependents

J-2 dependents may apply to the district office of INS having jurisdiction over their place of temporary residence for permission to accept employment, provided the income from such employment will be "used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J-1 principal alien." [8 CFR 214.2(j)(1)(v)(A)]

Applications for employment authorization are made on Form I-765 filed with INS and accompanied by the appropriate fee. One should submit along with the Form I-765 a letter stating why the employment is desired, indicating the source and amount of support for the principal participant, and specifically stating that the income derived from employment will not be used for the support of the J-1 exchange visitor. Financial need is not a criterion for employment authorization of a J-2 dependent; however, INS sometimes requires a budget or statement of estimated expenses to determine that the J-1 exchange visitor has adequate income.

INS must decide whether the letter and budget are required and be consistent in all offices. This may require additional rulemaking. Until a single procedure is established in all offices, applicants will need to submit documents required by the office at which the application is filed. The Forms I-94 of the principal participant and the dependent(s) applying for work permission should be submitted with the application.

If permission for employment is granted, an Employment Authorization Document (EAD) is issued and is valid for any kind of full-time or part-time employment for the period of time stated on the EAD. "J-2 employment may be authorized for the duration of the J-1 principal alien's authorized stay as indicated on Form I-94 or a period of 4 years, whichever is shorter. The employment authorization is valid only if the J-1 is maintaining status." [8 CFR 214.2(j)(1)(v)(B)] Although the regulations at 8 CFR 214.2(j)(1)(v)(B) provide for J-2 employment authorization for up to 4 years, INS will not issue an EAD for more than 1 year, and in no case may J-2 employment authorization exceed the program duration indicated on the principal's IAP-66.

Where a J-2 spouse or dependent child has filed a timely notification of extension of stay he or she may apply for a renewal of the employment authorization on Form I-765 with the required fee. If extension of stay is required in conjunction with extension of work authorization, the extension of stay notification must be filed prior to the extension of employment authorization. It is important to file the Form I-765 for continuation of employment authorization in a timely manner in order to preserve the J-2's right to work (see Section 14.10).

There is a question as to whether a medical doctor in J-2 status may be employed as an intern or resident for the purpose of obtaining graduate medical education or training or must instead qualify as specified in Section 9.10. Although many training programs are hesitant to permit this kind of employment because of the perceived congressional intent to control the training of foreign physicians, nothing in the J-2 employment regulations speaks to this issue and nothing in the INS statutes forbids it. However, issuing J-1 documentation to one spouse for the purpose of permitting the other spouse to work may be seen by USIA as an inappropriate use of the exchange visitor program. Further, the right of the J-2 to work is absolutely dependent upon the J-1 maintaining status. Training programs may be reluctant to accept trainees whose authorization to work is difficult to monitor and may be withdrawn unexpectedly.

J-2 dependents are subject to Social Security taxes, federal income taxes, and where applicable, state income taxes. (See IRS publication 519, United States Tax Guide for Aliens.)

9.17.5 Extension of stay

Extensions of stay may be granted to J-2 dependents for the same period of time allowed the principal J-1 participant and are included in the notification for that of the J-1 participant. The sponsor should attach to Form IAP-66 a statement on the program sponsor's letterhead indicating the following information about each dependent: name, relationship to the exchange visitor, nationality, place and date of birth, passport number, passport expiration date, and passport issuing country.

If notification of extension of stay for J-2 dependents is not made at the same time as that of the J-1 participant, the program sponsor should complete a new Form IAP-66 and the statement of information about each dependent and submit these to the USIA processing center.

9.17.6 Travel abroad and reentry

If a J-2 dependent wishes to travel outside the United

States for a temporary visit and to reenter the country, he or she follows basically the same procedures as a J-1 principal participant. The dependent must have the proper documents to enter the country to be visited and to reenter the United States. As in the case of the J-1 exchange visitor, to reenter the United States the dependent must have a valid passport and visa (unless exempt from passport and visa requirements—see Section 9.12.2) and a current third (pink) copy of Form IAP-66 issued in the name of the J-1 principal and with the "purpose" marked for family travel. The reverse side of the pink copy must be endorsed by the responsible officer (see Section 9.13.2). The same regulations and procedures for automatic revalidation of visas apply to the J-2 dependent as to the J-1 principal participant. The dependent may travel outside the United States and return either with the J-1 exchange visitor or separately.

A special situation arises when the principal J-1 participant travels outside the United States, leaving the J-2 dependent(s) in the United States. Since the dependent's stay in the United States is valid only while the J-1 participant maintains status here, it is not legitimate for the dependent to remain in the United States while the J-1 exchange visitor is absent from the country for any significant period of time. This period is not specified in the regulations. Certainly absence of a semester or annual vacation requires review by the responsible officer and discussion with the J-2 of the consequences of being out of status.

9.17.7 Two-year home country physical presence requirement

The J-2 dependent spouse and children are subject to the 2-year home country physical presence requirement if the J-1 principal participant is subject to that requirement.

9.17.8 Change of status

An alien holding a nonimmigrant classification other than C, D, or K (transit, crewman, fiancee or fiancé) or admitted as a visitor for pleasure or a visitor for business under the visa waiver pilot program may change to J-2 status if the spouse changes from another nonimmigrant classification to J-1 or if he or she becomes the spouse of an alien in J-1 status. In the first instance, the change is made automatically along with the principal participant's by including the dependent's Form I-94 with the principal's application for change to J-1 status. In the case of marriage to a J-1 alien, the spouse may apply for change to J-2 status by submitting to INS Forms I-94 of both the principal participant and the dependent(s), a completed Form I-539 and the required fee. INS action will be noted on the dependent's Form I-94, which will be returned by INS.

As in the case of the J-1 exchange visitor, the J-2 dependent may change from J-2 status to the following other nonimmigrant classifications: J-1, A, G, and if not subject to the 2-year home country physical presence requirement, any other nonimmigrant status. Procedures are the same as for a J-1 exchange visitor (see Section 9.15). [8 CFR 248.2]

A J-2 dependent may wish to change to J-1 status in order to accept academic employment, to remain in the United States following the departure of the J-1 principal to complete a program begun while in J-2 status, or for other reasons. To accomplish this change, the J-2 dependent should submit to INS a Form IAP-66 made out in his or her own name, his or her Form I-94, Form I-539, and the appropriate fee. If it appears to INS that the change from J-2 to J-1 will cause the applicant's stay to extend beyond that of the original J-1 principal, INS will also require a letter from the applicant stating (1) that he or she understands that the original J-1 principal probably will not be allowed to change to J-2 status and thereby extend his or her stay beyond its original duration to remain in the United States with the person who has changed from J-2 to J-1 and (2) that he or she wants the change from J-2 to J-1 despite that understanding. The applicant can save much time by including such a letter with the application for change from J-2 to J-1 status.

A J-2 dependent may adjust status to that of a permanent resident only if he or she is not subject to the 2-year home country physical presence requirement or has had that requirement waived, and if he or she is otherwise qualified (see Section 9.15).

9.17.9 Departure or termination of program

A J-2 dependent's status terminates in the United States when that of the J-1 participant terminates. The dependent reports his or her departure from the United States in the same way as the J-1 participant, by surrendering Form I-94 at the time of departure. Program sponsors have no special responsibilities for reporting departure or termination of program for the J-2 dependent as they do for the J-1 participant.

9.18 USEFUL ADDRESSES AND TELEPHONE NUMBERS

The following address for USIA is to be used for all Exchange Visitor Program correspondence other than transfer and extension notifications.

United States Information Agency
Office of General Counsel
Exchange Visitor Program Services
301 4th Street, SW (FEMA Room 200) GC/V
Washington, DC 20547

Telephone	202.475.6869 (general)
	202.475.6860 (program designation)
	202.475.6850 (waivers)
Facsimile	202.475.6859

The following address should be used for notification of extensions and transfers.

United States Information Agency
M/TMO
Rm. G-720, Cohen Bldg.
301 4th Street, SW
Washington, DC 20547

Educational Commission for
Foreign Medical Graduates
3624 Market Street
Philadelphia, PA 19105-2865

Telephone 215. 386.5900
Facsimile 215.386.9196
Direct telephone for sponsorship 215.662.1445

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SECTION 10

H Status: Temporary Workers and Trainees

Lorig S. Boyajian

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I-797	Notice of Approval or Extension of Nonimmigrant Visa Petition
I-94	Arrival/Departure Record
I-539	Application to Extend/Change Nonimmigrant Status
IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status
OF-156	Nonimmigrant Visa Application

ETA 9035 Labor Condition Application
ETA 9029 Health Facility Labor Attestation
Appendix 1603.D.1, North American Free Trade Agreement

10.1 GENERAL

The H classifications are used for temporary workers and trainees. The Act describes six H classifications:

1. The H-1A alien "perform[s] services as a registered nurse."

2. The H-1B alien "perform[s] services in a specialty occupation."

3. The H-2A alien "perform[s] agricultural labor or services ... of a temporary or seasonal nature."

4. The H-2B alien "performs other temporary services or labor ... if unemployed persons capable of performing such service or labor cannot be found in this country."

5. The H-3 classification has two subcategories, the first of which is defined as an alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving training in any field of endeavor except graduate medical education/training or training provided primarily at or by an academic or vocational institution. Incidental, supervised production necessary to the training is permitted, provided a U.S. worker is not thereby displaced. The second H-3 subcategory is set aside for participants in a special-education exchange visitor program that provides practical training and experience in the education of children with physical, mental, or emotional disabilities.

6. The H-4 classification is for the spouse and unmarried minor children of an H principal alien, if they accompany or follow to join an H-1, H-2A, H-2B, or H-3 alien. [Act 101(a)(15)(H); 8 CFR 214.2(h) and 22 CFR 41.53]

10.2 FILING AN H PETITION

A petition for H classification is filed on Form I-129 by an employer (the petitioner) who requires the services of, or will be training, an alien on a temporary basis. The petition must be submitted (in duplicate if requesting consular processing), along with supporting documents specified in the instructions on Form I-129, to the INS regional service center having jurisdiction over the place in which the alien is to be employed or receive the training. INS will notify the employer on Form I-797 (Notice of Action) upon approval of a petition. INS also sends the approved petition and/or notification of approval of the petition to the U.S. consulate where the alien will apply for an H visa (the consulate must be identified in the petition). In the case of Canadian citizens, INS will notify the appropriate port of entry because Canadians are exempt from passport and visa stamp requirements. After receiving the H visa, the alien can be admitted into the United States in H status (assuming, of course, that the alien is not excluded from entering for some other reason).

Prior to January 1992, Form I-129H was utilized by INS to adjudicate H petitions. An application for a change of status from another nonimmigrant classification was made on Form I-506. An application to extend one's H status was made on Form I-539. The Immigration Act of 1990 (the Act) mandated the consolidation of these applications. Form I-129 is now used for these purposes as described below.

If the alien is already in the United States in some other nonimmigrant status and wishes to obtain H status, a designation on Form I-129 must be made and a copy of the alien's I-94 must be attached. Dependent family members may be included on the principal's Form I-129. Processing fees vary according to the actions requested of INS. For example, if an H petition is being filed alone, one fee is necessary; if a change of status for the alien is also being requested, another fee is required. If dependents are included, additional fees are required. When the petition is approved, the alien's application for change of status and that of dependent family members will also be adjudicated.

If the alien is in the United States in H status sponsored by another employer or trainer, the I-129 petition must state that the alien wishes to extend his or her time of temporary stay, and a copy of Form I-94 must be attached to the petition along with the prior H approval notice(s) and fee. If the alien has dependent family members, they must file Form I-539 simultaneously with the principal's I-129 to have their status changed or extended. It is anticipated that the next revision of Form I-129 will include family members for an additional fee.

The employer is the petitioner, and it is expected that the alien will receive a salary or other compensation from the petitioner and not from any other employer in the United States. If the alien is to be employed by more than one employer, each employer must submit a separate petition. H-1 employment need not be full time or for a single employer. An H-1 alien could work part time for more than one employer, provided each employer has a Form I-129 approved for the alien. [OI 8 CFR 214.2(h)(1)]

This multiple-employer characteristic requires special attention from educational institutions. It is frequently the case that some employees are paid from more than one source and perform services at more than one location. Graduate and postgraduate teaching and research often involve joint or cooperative arrangements between universities, government agencies, and private industry, and individuals may be compensated separately by each organization. For example, a teacher or researcher in a school of forestry might also provide consulting services to a government office involved in resource management and supervise research in the genetic engineering of new plant species for a private company. All of these activities could well be part of his or her university duties as a member of the teaching and research faculty, and funding may come from any or all of these sources. To meet IRCA requirements for employment eligibility (see Section 14.10), it is important to identify these multiple responsibilities and sources of compensation and, if there is more than one employer, to file multiple H-1B petitions. On the other hand, if the university runs grant monies through its own coffers and the alien is being compensated for his or her services through one source, multiple I-129 petitions are not required.

Processing time for an H petition varies from one jurisdiction to another, but generally ranges from 3 to 6 weeks from the time the petition is submitted to INS. If the alien applies for a visa at a consular office abroad, additional time is needed to process the OF-156 nonimmigrant visa application. At the request of the petitioner, INS will cable approval to the consular office abroad if the validity of the visa will commence within 30 days of the H adjudication and the alien is abroad, thus accelerating the process of visa application at the consulate. If an extension or a change of status is being requested at the time of filing an H petition, Form I-824 (with fee) must be submitted if the petitioner wants INS to cable the notification of approval to a consulate abroad.

A copy of a valid Health Care Facility Labor Attestation must be attached to a petition for H-1A classification. A reviewed labor-condition application (LCA), stamped by the U.S. Department of Labor (DOL), is a prerequisite for filing an H-1B petition and securing such status. Temporary labor certification is required for securing H-2A or H-2B classification. No labor certification or labor-condition application is required for H-3 status.

10.3 H-1A Status—Registered Nurses

In 1989, Congress passed the Immigration Nursing Relief Act (INRA), which divided the prior H-1 classification into two parts: H-1A for registered nurses and H-1B. It also created a requirement that all health-care facilities employing nonimmigrant H-1A nurses annually file an attestation with DOL in Washington, DC, confirming that a number of conditions are present at the health facility and that certain steps are being taken to recruit and keep U.S. nurses. DOL must review and "approve" the facility's attestation before a facility can file an H-1A petition with INS.

To qualify for an H-1A visa, a foreign-educated nurse must (1) possess a full and unrestricted license to practice nursing in the country where the nursing degree (2 or 4 year degree) was obtained; (2) have passed the examination administered abroad by the Commission on Graduates of Foreign Nursing Schools, or have obtained a full and unrestricted license in the state of intended employment; and (3) be qualified to practice registered nursing immediately upon arriving in the state of intended employment. [8 CFR 214.2(h)(3)] A nurse who lacks a state license in the state of intended employment but has qualified for entry based on the CGFNS examination is not qualified to work immediately in all states. Many states, however, will provide an interim or temporary license while the nurse is waiting to take the state qualifying examination. Thus, in these states, an otherwise qualified nurse is able to work immediately. An H-1A nurse admitted to the United States pending a full and unrestricted license in the state of intended employment is admitted for a period of 1 year. To maintain H-1A status he or she must take and pass the licensing examination within six months of the date of entry into the United States. If an H-1A nurse fails to take and pass the exam within six months, he or she automatically loses H-1A status.

The petitioning employer must file: (1) the H-1A petition along with evidence documenting the alien's background as outlined above, (2) a current copy of DOL's notice of acceptance of the filing of the attestation, (3) a statement that the employer will comply with the attestation, (4) a list of what, if any, limitations will be placed on the nurse's services, and (5) a statement that notice of the filing of the H-1A petition has been provided to the registered nurse bargaining representative, or, if there is no such representative, that notice of the filing has been posted (with a copy of such notice). [8 CFR 214.2(h)(3)]

Notice to bargaining representatives (or, if there is no representative, posting of such notice) must be provided on or before the day the H-1A petition is filed with INS. Further, at the same time the H-1A petition is filed with INS, the employer must send a copy of the petition to Division of Foreign Labor Certifications, U.S. Department of Labor in Washington, DC, where the attestation will be ultimately on file. Finally, once the petition is approved by INS, a copy of the approval notice must be sent to DOL in Washington within 5 days of receipt of the notice.

The H-1A status initially is valid for up to 3 years (or 1 year if the alien does not possess a state license) with extensions available for up to 2 more years. There is a 5-year limitation on the total period an individual may be in H-1A status, with provision for a sixth year extension in extraordinary circumstances (see Section 10.10). The concept of dual intent applies to H-1A applicants (see Section 10.4.3).

The petitioning employer must prepare and file, on an annual basis and within 90 days of obtaining a prevailing wage determination from the state Department of Labor, an attestation to one of the U.S. Department of Labor regional offices depending on where the petitioning employer is located. The 4 regional offices are Boston, Chicago, Dallas, and Seattle. The attestation is completed on Form ETA 9029 and filed in duplicate by the chief executive officer of the facility. By completing and signing ETA 9029, the facility is attesting (1) that the delivery of health care services would be seriously disrupted through no fault of its own without the services of aliens because (a) the current registered-nurse (RN) vacancy rate is 7 percent or more, (b) the RN shortage makes it impossible to use at least 7 percent of beds, (c) essential health services must be eliminated or reduced because of the shortage, or (d) the shortage prevents the facility from implementing established plans for new health-care services (if the facility has laid off any RNs in the preceding year, it cannot meet the last condition); (2) that the employment of aliens will not adversely affect the wages and working conditions of RNs similarly employed and that the aliens will be paid the wage rate of RNs similarly employed at the facility; (3) that the facility is taking steps to recruit and retain sufficient RNs who are U.S. workers; (4) that there is no strike; and (5) that notice of filing the attestation is being provided to a bargaining representative at the facility or, if there is no representative, that notice has been posted in at least two conspicuous locations on the premises. Once the attestation has been reviewed and "accepted" (approved), DOL will retain one copy for public inspection purposes and return one copy to the employer. A copy of the returned attestation must be submitted with each H-1A petition filed by the facility during its 1-year validity.

These tasks of obtaining and maintaining the validity of a labor attestation and ensuring that all notice requirements are met are extremely complex and burdensome. Nevertheless, they must be strictly followed. If investigations reveal violations, fines and a suspension of the attestation could result, preventing an employer from hiring or extending the stay of any H-1A nurses for a least 1 year. [20 CFR 655.310(p); 655.415(c)]

The H-1A program as outlined above will expire on 1 September 1995 unless extended by legislation. INRA requires that a committee comprised of government representatives, health-care-management personnel, and organized labor analyze and recommend, among other things, whether to extend the H-1A program beyond its expiration date. [INRA section 3] This committee was formed in January 1991. If the H-1A program is not extended, nurses will be permitted to enter the United States using the H-1B visa.

For more detailed information regarding H-1A petitions and underlying attestation procedures, see Carl Shusterman, "The New DOL Nurse Regulations: Revisiting the 'A' Word," *Immigration Briefings*, no. 94-4, April 1994 (Federal Publications Inc.).

10.4 H-1B STATUS—SPECIALTY OCCUPATIONS

An H-1B temporary worker is defined as a person who will perform services in a specialty occupation. Formerly, the nonimmigrant H-1B classification was available to aliens of "distinguished merit and ability" or "professionals." As of 1 October 1991, the H-1B classification is available for those occupations that require "theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty or its equivalent as a minimum entry into the occupation in the United States." [Act 101(a)(15)(H)(i) and 8 CFR 214.2(i)(1)] With regard to the degree requirement, the alien must demonstrate completion of the degree (or its foreign equivalent) or possess experience equivalent to the completion of such a degree. To establish experience equivalent to a bachelor's degree, INS will accept 3 years of progressively responsible employment experience in a particular field as the equivalent of each year of university study that the alien lacks. For experience equivalent to a master's degree, the alien must possess a bachelor's degree followed by at least 5 years of experience in the field of specialty. Experience can not be substituted for education to assess equivalency to a Ph.D.

The regulations implementing the Act further define specialty occupation to include such fields as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health education, business specialties, accounting, law, theology, and the arts. [8 CFR 214.2(h)(4)(ii)(A)] Thus, the H-1B classification is appropriate for faculty members, researchers and many other kinds of temporary workers at the professional level.

As a preliminary step in obtaining H-1B classification, the Act of 1990 has mandated a process to monitor and prevent situations where the employment of H-1B aliens could have an adverse effect on the wages and working conditions of U.S. workers. The Act has charged DOL with governing this process. In its regulations, INS and DOL have created a labor-condition application (LCA) (see Section 10.4.1) as a condition for obtaining H-1B status for alien workers qualified for such status and for extensions of H-1B status.

The Act also makes the H-1B petitioner "liable for the reasonable costs of return transportation of the alien abroad [last place of foreign residence], if the alien is dismissed from employment by the employer before the end of the period of authorized admission" in H-1B status. [8 CFR 214.2(h)(4)(iii)(E)(4)] The employer is so liable for all H-1B aliens for whom it petitions after 1 October 1991. In essence, however, the requirement is unenforceable, and the INS has removed it from Form I-129. If the employer fails to comply with this provision, an alien may advise the INS service center in writing. The complaint by the alien will be placed in the employer's file for that alien. No penalties can be imposed on the employer, but INS could consider the fact that the employer did not comply with this provision when adjudicating future nonimmigrant petitions submitted by the employer.

The Act of 1990 imposes a cap of 65,000 on the number of H-1B petitions that INS may approve in each fiscal year.

The regulations implementing the Act of 1990 also provide for a special category of aliens to be accorded H-1B classification who are, based upon a reciprocity agreement, to "perform services of an exceptional nature requiring exceptional merit and ability relating to a [Department of Defense] cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense." [8 CFR 214.2 (4)(i)(A)(2)] For more information regarding this classification see 8 CFR 214.2 (4)(vi). Aliens classified as H-1B for DOD purposes may not exceed one hundred at any time.

The regulations require a petition for H-1B classification to be filed with a duly reviewed LCA and documentation supporting the petitioning employee's contention that the services to be performed require an individual who possesses a bachelor's, master's, or Ph.D. degree and that the alien is qualified to assume that position. Such documents should include a statement from the employer detailing the job duties to be performed and, depending on the position offered, copies of any degrees, academic records, licenses to practice the profession, and affidavits or letters attesting to the alien's higher education, technical training, or qualifications as a professional. To establish specialized employment experience for degree-equivalency purposes, the petition should be supported by affidavits attesting to the beginning and ending dates of the alien's employment and describing the alien's experience or exceptional ability by those who are in a position to make such statements. The petition must show that the alien is coming to the United States for temporary employment, although the position the alien will occupy may be a continuing one.

10.4.1 Labor-condition application for H-1B

The INS and DOL regulations specify that before filing a visa petition for H-1B specialty occupation classification, DOL must review an LCA in the occupational specialty for which H-1B classification will be sought. Upon completion of such review by DOL, the LCA is returned to the employer and is subsequently submitted with Form I-129 and other supporting documentation to INS for H-1B adjudication. The employer must submit an original and one copy of a completed and signed LCA on ETA Form 9035 to the regional office of the DOL Employment and Training Administration in the area where the worker will be employed (a list of such offices appears in Appendix 6). Regional offices will review these applications for completeness within 7 working days of their receipt and return one copy to the employer. [8 CFR 214.2(h)(4)(i)(B); 20 CFR 655.700, 730]

The petitioning employer must provide on Form 9035 (1) the occupational code for the job from DOL's *Dictionary of Occupational Titles,* (2) the employer's own title for the job, (3) the number of H-1B workers sought in that classification, (4) the gross wage rate of pay, (5) the prevailing wage rate and the source of that rate, (6) the period of employment up to 3 years, and (7) the place(s) of intended employment. The LCA may be filed with the DOL up to 6 months before the date of the intended employment listed on the LCA. It should indicate the same period of intended employment as the I-129. The employer may use one LCA for one occupational classification only. Although DOL permits the filing of one LCA for multiple positions within the occupation, it is strongly advised that separate LCAs be filed for each individual job opportunity. Additionally, an employer may not substitute one alien for another on the LCA. For example, if an LCA valid for 6 years was filed for one assistant professor who leaves employment before the expiration of the LCA, a new LCA is required before another alien may be hired to replace him. [20 CFR 655.730]

The maximum validity period for LCAs filed after 18 January 1995 is 3 years. Any LCA filed before 19 January 1995 and certified for more than 3 years will remain valid to the ending date of employment as certified.

Several important elements of the LCA procedure must be completed before an LCA can be properly filed with DOL. These are the actual and prevailing wage determinations (see Section 10.4.1.1), notice requirements (see Section 10.4.1.2), and public-disclosure requirements (see Section 10.4.1.3). Although the new regulations are silent on LCAs certified by DOL under the old rules, DOL officials have indicated that within 3 years of the date of certification all "grandfathered" LCAs must adhere to and meet the new requirements governing (1) notification at new worksites and (2) actual and prevailing wage determinations.

By signing and submitting a completed Form 9035 to DOL, the employer affirms that the employment of the H-1B alien will not adversely affect the working conditions of workers similarly employed in the area of intended employment, and that there is no strike, lockout, or work stoppage related to a labor dispute in the occupation in which the H-1B alien will be employed. [20 CFR 655.730(d)]

A complaint filed by any aggrieved party, including any government agency, will be investigated if DOL has reasonable cause to believe that a misrepresentation or failure to meet any condition on the LCA has occurred. Furthermore, the DOL has asserted its authority to undertake investigations on its own initiative, whether or not a complaint has been filed, if it has reason to believe that a violation has occurred. If DOL finds that the employer failed to pay the required wages, for example, due to an inappropriate prevailing wage determination, the H-1B alien will be entitled to collect back wages. Civil money penalties of up to $1,000 per violation may be imposed. If a willful failure is found (in which the employer knows that the failure is contrary to law or has reckless disregard for the law), DOL will notify INS, and the employer will be barred from filing nonimmigrant and immigrant petitions for at least 1 year. [8 CFR 214.2(h)(i)(B)(5); 20 CFR 655.810]

An employer is bound by the conditions of the LCA, including the retention of all documentation underlying the LCA, for the duration of validity of the LCA plus 1 year. The LCA remains valid until the validity date on the LCA or until it is withdrawn. A certified LCA may be, and should be, withdrawn from the DOL if the H-1B alien is no longer employed pursuant to the LCA (that is, if the H-1B alien obtained permanent resident status, was terminated, or otherwise left the employment). [20 CFR 655.750]

10.4.1.1 Wages to be paid an H-1B alien

By signing and submitting a completed Form 9035, the employer confirms that it will pay the H-1B alien no less than the greater of the actual wage paid to all other individuals at the work place with similar experience and qualifications for the specific employment or the prevailing wage level for the occupational classification in the area of intended employment (a geographic area within commuting distance of the place of employment). [20 CFR 655.730]

The Act makes the employer responsible for establishing the wage that it must pay an H-1B alien based on the best information available at the time an LCA is filed. Thus, it is critical that extra effort be made to obtain appropriate information and documentation regarding (1) actual wages paid to all other individuals with similar experience and qualifications for the specific employment in question and (2) the prevailing wage level for the occupational classification. Employers are not precluded from paying H-1B aliens more than the higher of the actual wage or the prevailing wage; however, it is imperative that the employer amass the appropriate materials to support this practice. All information and documentation regarding prevailing wage and actual wage must be gathered before filing an LCA, as this information must be articulated on the LCA.

DOL defines wages for H-1B purposes as only those payments that are shown in the employer's payroll records as earnings and disbursed to the employee as cash in hand, free and clear (except for authorized deductions) and reported to the Internal Revenue Service as earnings with appropriate withholding. [20 CFR 655.731(c)(2)] Salaried employees must be paid in regular installments as ordinarily used by the employer (but no less frequently than once per month). Each installment must equal a prorated portion of the total required wage rate unless part of the required wage rate is made up of payments such as performance bonuses or one-time payments. The LCA and I-129 petition for a faculty member who is to be hired and paid on a 9-month contract should show the 9-month salary as an annual salary; a monthly salary should not be entered.

For purposes of enforcement, an H-1B alien is considered to be under the control of the employer and must receive full wages beginning no later than the first day the H-1B alien is in the United States and covered by the LCA, and continuing until the last day of the period of employment. An H-1B worker arriving in the United States from abroad may not have a U.S. Social Security number and may not get on the payroll immediately. Employers should explain to new H-1B workers how to obtain a Social Security number, preferably well in advance of their arrival in the United States. If the H-1B alien is in "nonproductive status," the employer must continue to pay the wage rate. If the nonproductive status is due to conditions not related to employment, such as sick leave, and the status is permitted by the INS to stand, the employer is not obligated to pay the required wage rate during that nonproductive period.

To determine the actual wage, the employer must first identify all other employees who are performing the actual set of duties and who have the same responsibilities the H-1B alien will have. Consideration should be given to the following factors: (1) the length and type of work experience of other employees in the position to be occupied by the alien, compared to the experience of the alien, (2) the similarity of job qualifications, educational background, and class rank, (3) job responsibilities and actual duties, and (4) specialized knowledge in a specific area within the field. Other "legitimate business factors" justifying different compensation levels for the same job, such as professional distinction or international acclaim, are also acceptable considerations. [20 CFR 655.731(c)(1)]

Once employees with substantially the same duties and responsibilities as the H-1B alien have been identified, their compensation levels must be examined in order to determine what the actual wage is for the position. In some instances, an H-1B alien may be sought to occupy a position for which there are no similarly employed individuals. For instance, a university will petition for an H-1B for an instructor of Indonesian music and does not have any other such positions. In a unique situation such as this, the actual wage will be the wage paid to the H-1B alien.

The employer must make and retain a statement documenting the existence and use of an objective system to determine the wages of non-H-1B workers. It is not sufficient for an employer simply to calculate an average wage of all non-H-1B employees in an occupation; the actual wage is not an average wage. [20 CFR 655, Appendix A to Subpart H] The information detailing the employer's compensation system should be detailed enough so that a third party could use the system to come to the same conclusions concerning the wage rate for certain occupations. Adjustmernts in the wage rates applicable to all workers must also be documented. It is important that the actual wage be documented carefully and in detail. Investigations conducted by DOL since 1991 have resulted in penalties against employers that have inadequately documented the methods they used to determine the actual wage.

The prevailing wage is generally considered the average rate of wages paid to workers similarly employed in the area of intended employment, within 5 percent. Although there are a variety of legitimate methods of determining the prevailing wage, the regulations require that the determination be based on the best information available.

If the position is covered by a union contract, the wage rate applicable to the occupation in the bargaining agreement is considered the prevailing wage. The regulations consider a union contract as one of the best available sources in determining prevailing wage. [20 CFR 655.731(a)(2)(ii)]

An employer may also contact SESA, the State Employment Security Agency (the local office of DOL), to obtain a determination of the prevailing wage. SESA conducts and maintains prevailing wage surveys as part of the permanent alien labor certification process. To obtain a prevailing wage determination from SESA, a detailed job description, the minimum requirements for the position, and information regarding the size and financial strength of the employer are submitted. Prevailing-wage-determination request forms are available from SESA. DOL considers a SESA determination a "best-available" source. If the employer obtains its prevailing wage determination from SESA, DOL will accept that determination as correct and will not question its validity provided that the employer maintains a copy. Also, according to DOL, a complaint alleging inaccuracy of a SESA determination will not be investigated. If a SESA determination is used to establish the prevailing wage, the employer must check a box on Form 9035 indicating that it used SESA to obtain the prevailing wage and must file the LCA within 90 days of the issuance of the SESA determination. [20 CFR 655.731 (a)(2)(iii)(A)]

Many academic institutions have found SESA determinations to be inappropriate in the educational setting because SESAs in several states have begun to apply an administrative law decision that overturned an earlier decision that had allowed colleges and universities to be compared only to similar colleges and universities for prevailing wage determinations. [*Matter of Hathaway Childrens Services*, 91 INA 388; BALCA, 4 February 1994] Under the new decision—which DOL sought and would like to see widely applied—SESA determinations in an increasing number of states are being based on salary surveys that do not differentiate between private industry and academia, between large and small universities, or between 4- and 2-year institutions. DOL also appears not to be making distinctions among various academic disciplines. Instead it lumps together all professors with a certain number of years of experience. This has led to inflated prevailing wage determinations in states where the SESA has begun to follow the *Hathaway* decision. DOL would like all SESAs to apply *Hathaway*, but some appear to be resisting. Some universities in states where the SESA is applying *Hathaway* have had to suspend use of the H-1B category altogether. NAFSA and other groups are negotiating with DOL to change the department's rules for calculating the prevailing wage.

Another legitimate source is an "independent, authoritative (published) source survey," such as a professional, business, educational or organizational salary survey which has recognized standing in an occupational field and was conducted within the immediately preceding 24 months. The survey must cover the occupational classification for which an H-1B is sought. The DOL will not investigate a prevailing wage determination from such a survey if the employer, acting in good faith, has applied the survey accurately to the occupation and the geographic area of intended employment. DOL may investigate if it receives significant evidence that shows a prevailing wage that varies substantially from that attested to by the employer. Under the circumstances, it would be prudent to consult the university's general counsel's office before using a source other than SESA to complete the prevailing wage requirements of the LCA.

The employer may also use other legitimate sources but will have to be prepared to demonstrate their legitimacy in the event of an investigation. An example of a legitimate alternative source may be a salary survey done by the employer evidencing the rate of pay at companies within a 100-mile radius for a particular position requiring substantially similar levels of skills within the area of intended employment, by contacting ten or more like employers in the area where the alien will work and receiving written, well detailed statements regarding the position, requirements, and salary level.

The employer must develop and retain documentation on how it determined the prevailing and actual wage rate for each H-1B petition and may have the burden of proving the validity of such determinations in the event of an investigation. To evidence an actual wage determination, a statement regarding the wage-rate system and payroll records for each employee in the narrowly defined occupational classification must be maintained. Each payroll record must include the employee's name, address, occupation, rate of pay, the hours worked each day and each week, the total daily or weekly straight-time earnings of that employee, the total overtime compensation for the week for that employee, total additions to or deductions from pay for each period, and total wages paid each pay period. Such payroll records must be retained for 3 years from the date of the creation of the record. The DOL regulations also require that documentation be maintained to explain changes in salary during the validity of the LCA (such as cost of living increases or an increase in the entry-level rate due to market forces) and to show that the salary paid to the H-1B alien still equals or exceeds the greater of the adjusted actual or prevailing wage.

Employers should be very careful in designating any particular job classification and must describe job duties with as much finesse as possible. For example, in research fields under the LCA process, it would be not only useful but imperative to divide the class of research associates into a number of subclasses corresponding to job requirements and qualifications. Such classifications or subclassifications, supported by adequate documentation, will justify different wage levels for each, and thereby prevent the imposition of penalties.

10.4.1.2 Notice requirements

The employer must notify the alien and all employees that an LCA is being filed. If there is a collective bargaining representative, the employer must notify that representative within 30 days of filing the LCA with the DOL. The notice must identify all pertinent information on the LCA and must include the following statement (which appears on the current ETA 9035):

> Complaints alleging misrepresentation of material facts in the LCA and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the U.S. Department of Labor.

Where there is no collective bargaining representative, the employer must post such notice in at least two conspicuous locations at each place of employment where the H-1B alien will be employed. The notice must be posted within 30 days of filing the LCA and must remain posted for at least 10 days. The posting of an exact copy of the Form 9035 is sufficient to meet the notice requirement.

If the H-1B alien will work at a work site within the area of intended employment that was not listed on the LCA at the time it was filed, the employer must post new notices, for 10 days, at the new work site on or before the day on which the H-1B alien begins work at that site. As long as the work site is within the area of intended employment listed on the previously filed LCA, it is not necessary to file a new LCA. It is necessary, however, to incorporate proof of the posting into the H-1B alien's job folder. If the H-1B alien is sent to a work site outside the area of intended employment and if that work site is not listed on the previously filed LCA a new LCA should be filed for that place of employment.

The employer need not file a new LCA if (1) the H-1B worker is paid a per diem and travel expenses for every day (including non-work days) the H-1B worker is on travel or temporary assignment and (2) the per diem payments are based on rates paid to federal employees and are paid in addition to the required wage rate. In this case, the employer is required to keep documentation for every work day on which any H-1B worker worked at a location outside the area of intended employment. Once an employer has accumulated a total of 90 such work days in any 3-year period, that employer may no longer have any H-1B workers at any work site not covered by an appropriate LCA. [20 CFR 655.735]

For most U.S. employers, including academic employers, the exemption described above is no more practical than is filing a new LCA whenever personnel are required to travel on business outside of their "area of intended employment." Employers have pointed out the unexpected consequences of this part of the regulations and urged DOL to amend the regulations as soon as possible.

The regulations also require that the H-1B alien be provided with a copy of the LCA governing his occupation and certified by the DOL no later than the first day that the H-1B alien reports to work at the place of employment. It is wise for the employer to retain an acknowledgment that the alien indeed received a copy of the LCA. [20 CFR 655.734(a)(2)]

10.4.1.3 Record-keeping requirements

The regulations state that the employer must make the LCA and necessary supporting documentation available for public examination at the employer's place of business or at the place of employment within 1 working day after the date on which the LCA was filed. [20 CFR 655.760] The following documentation is required:

(1) A copy of the completed LCA Form 9035. If the form was faxed to DOL, the application containing the original signature must be maintained in the file.

(2) Documentation that specifies the wage rate to be paid the H-1B alien. This must include a memorandum used to obtain the actual wage as well as all documentation used to determine the prevailing wage (such as a SESA determination or an authoritative survey).

(3) A full and clear explanation of the system the employer uses to set wages, including any periodic increases the system may provide. A memorandum summarizing the system or a copy of the employer's pay scale is acceptable. Payroll records need not be kept in the file for public examination, but these must be made available to DOL in the event of an investigation.

(4) A copy of the documents the employer used to satisfy all notice requirements (either the postings, with dates posted, dates removed, and places posted, or proof of notification to a bargaining representative. Proof of notice to the H-1B alien also should be retained.

The foregoing information must be kept for 1 year beyond the validity of the LCA. Payroll records for the alien and all other employees in the same occupational classification must be retained for 3 years beyond the validity of the LCA.

Employers must create a public folder for each LCA and H-1B petition filed. It is a good idea to file the folder by occupation, academic department, date of filing, and ETA case number (found on the LCA). Cross-filing in this manner will permit easy access to information in the event of public inquiries. DOL's 1995 LCA procedures audit requested information on employees' wages by the LCA case number assigned by the ETA.

10.4.2 Period of stay

An H-1B alien may be admitted to the United States for an initial period of up to 3 years but may not exceed the employment period of the LCA. Extensions of stay may be received for up to 3 more years. Any extension petition must be accompanied by a duly reviewed LCA. The maximum total stay in H-1B status is 6 years (see Section 10.10 for procedures for extension of stay). [8 CFR 214.2(h)(13)(i)(B)(iii)(A), and (13)(ii)(B)(i)] An H-1B alien who "has spent 6 years in the United States ... [in H-1B status] ... may not seek extension, change of status or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.... Brief trips for business or pleasure for the immediate prior year are not interruptive of the 1-year requirement, but do not count towards fulfillment of the required time abroad." The H-1B limitation on admission will not apply to "aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of 6 months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment." Clear and convincing proof must be provided to show that the alien qualifies for one of these exceptions. The proof may include copies of tax returns, arrival and departure records, or other evidence to show the short-term nature of employment. [8 CFR 214.2(h)(13)(iii) and (v)]

10.4.3 Dual intent

The Act gives statutory recognition that the approval of a labor certification for permanent employment or the filing of a preference petition for permanent resident status for an alien shall not be a basis for denying an H-1A or H-1B petition, a request for extension, admission to the United States, or change of status from another visa category. [Act 214(b)] The Act of 1990 allows an alien applicant to come to the United States legitimately for a temporary period as an H-1A or H-1B and to depart voluntarily at the end of the authorized stay unless the alien has by then become a permanent resident of the United States. No longer must a prospective H-1A or H-1B alien demonstrate that he or she has not abandoned a residence abroad. The provisions also allow an H-1A or H-1B alien to continue to provide temporary services as a nonimmigrant while both the employer and the alien are taking steps to convert the alien to a permanent status.

The concept of dual intent is of particular interest to colleges and universities that appoint foreign faculty members to tenure-track positions with the possibility of awarding tenure after an initial period of temporary employment. The concept of dual intent allows an alien to obtain H-1B status and maintain that status while making the lengthier arrangements for adjustment to permanent-resident status (see Section 13.7). The same possibilities exist for non-tenure-track researchers whose intent and length of employment are subject to change.

Dual intent is a subtle concept that must be considered carefully by employers and aliens alike. The statute and regulations recognize dual intent only for H-1A, H-1B, L, O, and P aliens and their dependents in H-4, L-2, O-2, or O-4 status and not for any other classes of nonimmigrants (8 CFR 214.2(0)(14) and 8 CFR (P)(15). Most important, dual intent is specifically mentioned in the State Department's *Foreign Affairs Manual*, which will no longer allow consular officers to make determinations of the intent of an applicant for a nonimmigrant H-1A and H-1B visa. Therefore, it is now possible to obtain a new H-1A or H-1B visa from a consular officer abroad as well as revalidation of that H-1A or H-1B visa without fear of a denial based on intent to immigrate.

10.4.4 Foreign medical graduates

Prior to 1 October 1991, an alien physician educated outside the United States (a foreign medical graduate, or FMG, other than a physician of "national or international renown"—see Section 10.4.5) could be documented as an H-1B temporary worker only if coming to the United States for the purpose of engaging in teaching or research. If an alien was coming for the purpose of obtaining graduate medical education or training (for an internship or residency or similar purpose involving patient care—see Section 9.12.1), the FMG was to come as an exchange visitor under the P-3-4510 program of the Educational Commission for Foreign Medical Graduates and was not eligible for H-1B classification (see Section 9.12.4). In drafting the Act, Congress omitted the prohibition of foreign medical graduates from obtaining an H-1B visa if coming to the United States principally to engage in patient care. The Immigration Technical Corrections Act of 1991 (Title III of H.R. 3049), signed by the president on 12 December 1991, explicitly restores conditional language to the H-1B classification for physicians. Like the previous law, it specifies that a graduate of a foreign medical school may obtain an H-1B if the graduate is coming for the purpose of teaching or research at a public or nonprofit private educational or research institution or agency. However, a nonimmigrant physician intending to provide patient care or receive clinical training is now eligible to obtain an H-1B if the alien (1) has passed the Federation Licensing Exam (FLEX) or an equivalent examination as determined by the secretary of health and human services and (2) has competency in oral and written English or is a graduate of a school of medicine accredited by a body approved for the purpose by the secretary of education (regardless of whether such school of medicine is in the United States). Schools so accredited include those in the United States and Canada.

In September 1992, the Department of Health and Human Services announced that two U.S. licensing examinations were considered equivalent to the FLEX for the purposes of granting H-1B status to foreign physicians. The two equivalent examinations are: (1) Steps 1, 2, and 3 of the new U.S. Medical Licensing Examination (USMLE) and (2) Parts I, II, and III of the National Board of Medical Examiners (NBME) certifying examinations. The USMLE was phased in during 1992, and the NBME has been discontinued (see Section 13.4.4.2). Step 1 of the USMLE was administered for the first time in June 1992, and Step 2 was initially administered in September 1992. Step 3 of the USMLE will be administered for the first time in 1994. [*Federal Register*, 16 September 1992, p. 42755] During this transition period, certain combinations of the Parts of the NBME and Steps of the USMLE will be considered to satisfy the examination requirements.

"Foreign medical graduates" (or "graduates of a medical school," the term used in the Act for this purpose) are defined as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine."[Act 101(a)(41)] This rather ambiguous definition is intended to encompass aliens who have graduated from a medical school in a foreign state or who have otherwise earned in a foreign state their qualifications to practice medicine. It excludes alien physicians who are of national or international renown, even if they obtained their medical educations outside the United States.

10.4.5 Medical doctors of national or international renown

An alien medical doctor "of national or international renown" is not considered to be a foreign medical graduate and, therefore, is not subject to any of the restrictions of the immigration law regarding entry to the United States for the purpose of graduate medical education and training or the practice of medicine. Therefore, presumably, medical doctors of national or international renown could be documented as H-1B temporary workers for the purpose of teaching, research, patient care, or any other position involving the practice of medicine. However, the departments of State and Justice have not developed guidelines as to what constitutes a medical doctor of national or international renown. In the absence of guidelines, probably the best standard to use is whether the alien can be considered of exceptional ability in the sciences or the arts for purposes of applying for permanent residence status.

10.4.6 U.S.-educated medical interns and residents

Alien medical doctors who have received their medical training and have graduated from a U.S. medical school are not considered to be foreign medical graduates. Therefore, such aliens may undertake internships and residencies in the United States while in H-1B status without first passing FLEX or other equivalent exams, and are eligible for this classification in order to perform any other services as a member of the medical profession, including services primarily involving direct patient care. [8 CFR 214.2(h)(v)(B)] However, the 6-year limitation on the stay of an H-1B alien allows too little time for the completion of some of the longer residencies. Please note that in drafting the regulations implementing the 1990 Act and subsequent amendments of 1991, INS states that all non-resident aliens, regardless of where their medical education was obtained, are required to have passed the FLEX. The Service has acknowledged this error, and the final regulations rectified it. (Supplementary Information, *Federal Register*, 11 January 1994)

10.5 H-2 STATUS—TEMPORARY WORKERS

The H-2 temporary-worker classification is divided into two categories, H-2A for temporary agricultural workers and H-2B for other temporary workers.

10.5.1 H-2A status—temporary agricultural workers

An H-2A temporary agricultural worker is a person who is "to perform agricultural labor or services as defined by the Secretary of Labor ... of a temporary or seasonal nature." [Act 101(a)(15)(H)(ii)] This is a new classification created by the Immigration Reform and Control Act of 1986 (IRCA, PL 99-603). It is unlikely that advisers in colleges and universities will encounter H-2A aliens.

10.5.2 H-2B status—other temporary workers

An H-2B temporary worker is a person "who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country." [Act 101(a)(15)(H)(ii)] The petitioner must demonstrate that unemployed persons capable of performing the services cannot be found in this country and that the alien is coming temporarily to perform services that are temporary in nature. The petitioner's need for the services must be a one-time occurrence or meet a seasonal, peak-load, or intermittent need. The petitioner's need must be for less than 1 year, although the underlying job can be described as permanent or temporary. [8 CFR 214.2 (h)(6)(ii)(B)] Although the petitioner may have a continuing need for the services of technicians (for instance), an H-2B petition may be approved only where work is limited to a particular, temporary need as described above.

An employer must attach to an H-2B petition either a temporary labor certification or a notice from DOL that the certification cannot be issued. In the latter case, the employer must present countervailing evidence that qualified U.S. workers are not available. [8 CFR 214.2(h)(6)(iii) and (iv)]

The H-2B classification is not available to foreign medical graduates coming to the United States to perform services as members of the medical profession. [Act 101(a)(15)(H)(ii)] During each year, the total number of H-2B petitions that will be approved may not exceed 66,000. [Act 214 (g)(B)]

10.6 H-3 Status—Trainees

10.6.1 General

An H-3 trainee is defined as a person "coming temporarily to the United States as a trainee, other than to receive graduate medical education or training or training provided primarily at or by an academic or vocational institution." [8 CFR 214.2 (h)(1)(ii)(E)] Regulations further define an H-3 trainee as a "nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an organization or individual, other than graduate medical education or training, such as agriculture, commerce, communication, finance, government, transportation or the professions as well as training in a purely industrial establishment." [8 CFR 214.2(h)(7)]

A trainee may receive remuneration from an employer, but may not engage in productive employment unless incidental to the training, nor displace a U.S. worker. Generally, the training should not be available in the alien's home country.

A petitioner must attach to each H-3 petition evidence of a well structured training program and a statement describing the kind of training to be given and setting forth the proportion of time that will be devoted to productive employment; the number of hours that will be spent respectively in classroom instruction and in on-the-job training with supervision; the position or duties abroad for which this training will prepare him or her; the reason why such training cannot be obtained in the alien's home country; and why it is necessary for the alien to be trained in the United States. [8 CFR 214.2(h)(7)(ii)(A) and (B)]

An alien may be classified as an H-3 for the duration of the training program or up to 2 years, whichever is less. Unlike the H-1B, H-3 aliens applying for admission to the United States must possess nonimmigrant intent and satisfy a consular officer that they have no intention of abandoning their residence abroad.

Educational institutions may not petition for H-3 status for aliens who wish to undertake academic training programs not covered under the terms of the institution's exchange-visitor program.

10.6.2 Nurses

A petitioner may seek H-3 classification for a nurse who is not qualified for H-1A status but who wishes to come to the United States for further training in nursing that is unavailable in his or her native country and will benefit an overseas employer. The petitioner must attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the nursing education was obtained, or that such education was obtained in the United States or Canada, as well as a statement from the petitioner certifying that to the best of the petitioner's information and belief, "the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training." [8 CFR 214.2(h)(7)(i)(B)] To obtain an H-3 classification in this area, all general requirements must be met (see Section 10.6.1).

10.6.3 Foreign medical school student trainees

According to the regulations,

> A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation. [8 CFR 214.2(h)(7)(i)(A)]

To obtain an H-3 classification in this area all general requirements must be met (see Section 10.6.1).

10.6.4 Special-education exchange visitors

The Act provided admission for individuals coming to the United States to participate in a structured program that provides for training and hands-on experience in the education of children with disabilities. The regulations have designated the H-3 classification for these individuals, although the latter will not be subject to the general requirements of other H-3 visa holders. INS will approve up to 50 such petitions each year. The petitioning employer must have a professionally trained staff and submit to INS a description of the training as well as evidence that the alien is nearing completion of a bachelor's or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in the field. These trainees may perform productive employment but are limited to this H-3 classification for up to 18 months. At the end of the 18 months, the trainee may not change status or be readmitted in an H or L visa classification unless he or she has been physically outside the United States for at least 6 months. [8 CFR 214.2 (7)(iv) and (13)(iv) and (v)]

10.7 H-4 Status—Dependents

The spouse and unmarried minor children of an H-1, H-2, or H-3 alien are accorded H-4 classification. Application for this classification is included in the petition for the principal H alien. [8 CFR 214.2(h)(9)(iv)] H-4 status does not provide for employment authorization, although H-4 dependents may attend school while in H-4 status. H-4 students who must work as part of their program or assistantship must change their status to the appropriate student status (F-1, M-1, or J-1).

10.8 EMPLOYMENT STATUS

A temporary worker or trainee in H-1A, H-1B, H-2A, H-2B, or H-3 status may be employed only by the petitioner through whom the status was obtained. H-4 aliens may not be employed.

An H-1B alien changing employers is not eligible to work for the new employer until that employer's petition (Form I-129) has been approved. However, the H-1B employee may continue to work for the old employer after receiving authorization to work for the new one, provided the original petition is still valid.

10.9 H AND J STATUS COMPARED

10.9.1 Differences between H-1 and J-1 status

Educational institutions interested in having the services of nonimmigrant aliens for professional teaching and research positions can assist such aliens to secure either H or J visas. H-1B classification is meant to be used by aliens who are coming to the United States to perform temporary services. However, the approval of a permanent labor certification or the filing of a preference petition for an H-1 alien would not be considered contradictory to the alien's temporary H-1 status. This new provision of the regulations recognizing dual intent has important implications in the hiring of foreign faculty members. The concept of dual intent is recognized for H-1B aliens and is contradictory to the purposes of J-1 classification.

Advantages of H-1B status include the following: (1) while temporary, it allows a maximum period of stay of 6 years, whereas J-1 professors and researchers are admitted initially for 3 years with an additional 3 years possible in certain cases; and (2) an H-1B alien may apply for adjustment of status to permanent resident or for change of status to another nonimmigrant classification, whereas some J-1 aliens are prohibited from such changes because of the 2-year home-country residence requirement of section 212(e) of the Act (see Section 9).

The Department of State, the United States Information Agency, and INS make a further distinction between the H-1B alien who comes specifically to perform services and the J-1 exchange visitor who comes as a participant in an exchange-visitor program designed to "promote interchange of persons, knowledge, and skills, and the interchange of developments in the field of education, the arts and sciences," in such a way as to promote "mutual understanding between the peoples of the United States and the people of other countries." [22 CFR 514.1]

J-1 status does not require an LCA, unlike the H-1B. Obtaining an H-1B visa usually takes more processing time than is required for a J-1 visa. A petition for H-1B classification must be approved by INS before an alien may apply for a visa, and supporting documentation must be collected and submitted with the petition. However, an alien may apply for a J-1 visa immediately upon receiving Form IAP-66 from the program sponsor. On the other hand, if the alien is in the United States and will apply for a change of status or extension of stay under a new petition by a new employer, the petition and the application for change of status or extension of stay are usually adjudicated simultaneously. A fee is required for an H petition and for extension of stay in H status.

10.9.2 Differences between H-3 and J-1 status

H-3 and J-1 trainees are similar in many respects. The chief differences between them are that (1) H-3 trainees may not engage in "productive employment" (as defined in the H-3 petition) and J-1 trainees may; (2) H-3 trainees may be allowed to remain in the United States longer than J-1 trainees; (3) J visas may be obtained more easily and quickly than H visas; and (4) a fee is required for an H-3 petition and for extension of stay in H-3 status, whereas no fee is required for issuing Form IAP-66.

Neither H-3 nor J-1 trainees require an LCA. Both types of trainees may be paid.

10.10 EXTENSION OF STAY

An alien may be admitted to the United States in H-1A status for an initial period of up to 3 years, or only up to 1 year if the alien does not possess a full and unrestricted license in the state of intended employment (see Section 10.3). Extensions of stay may be authorized not to exceed a maximum period of 5 years from initial entry in H-1A status. A sixth year is possible under extraordinary circumstances. Extraordinary circumstances are considered to exist when it is determined by INS "that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety or security interests of the United States. Each [extension] must be accompanied by a current copy of DOL's notice of acceptance of the petitioner's attestation on Form ETA 9029." [8 CFR 214.2 (15)(ii)(A)]

An alien may be admitted to the United States in H-1B status for an initial period of up to 3 years, provided the employer has need of the alien's services for that period of time. Extension of stay may be authorized for up to 3 more years, not to exceed a maximum period of 6 years in the United States in H-1B status. It is important to remember that an LCA, duly reviewed by DOL, is required for any petition filed for a H-1B extension after 1 October 1991 regardless of when the original H-1 visa was obtained.

An alien in H-2B status may be admitted for the period of validity of the temporary labor certification. An application for extension of stay in H-2 status "may be authorized for the validity of the labor certification or for a period of up to 1 year.... The alien's total period of stay as an H-2A or H-2B worker may not exceed 3 years." [8 CFR 214.2(h)(15)(ii)(C)]

An extension of stay may be authorized to an H-3 worker for the length of the training program, but the total period of time an individual can be in H-3 status is 2 years. H-3 aliens who are participating in a special-education training program may only stay up to 18 months. [8 CFR 214.2(h)(15)(ii)(D)]

Application for extension of stay in H classification is made on Form I-129 accompanied by a copy of the alien's I-94, a statement from the employer detailing the position, salary and length of time requested, the prior H approval notice, and a fee, but without documents evidencing the alien's background unless it is an H-2B extension. The application must be submitted to the regional service center. Application for extension of stay of dependents who are classified H-4 can be included on Form I-129 for an additional fee. Copies of all I-94s must be attached to the form. Form I-797 approval notice is issued, along with a newly annotated I-94 card.

10.11 Visits Outside the United States and Reentry

The petitioning employer must furnish the Form I-797 (not a copy) on which INS action on the petition was originally noted to a beneficiary of an H petition who desires to depart from and return to the United States to resume the same employment within the period for which the petition is valid. INS may also issue an original Form I-797, upon request, to an H alien who has lost the original and intends to depart from and return to the United States within the period for which his or her temporary stay has been authorized to resume the same employment. A new Form I-797 is issued for an extended petition and an extended stay. It is prudent to give the H-1B alien a letter of current date confirming that he or she is currently employed in the same position as described in the H petition and needs to reenter the United States to continue that employment. Although this documentation is not required by the regulations, many consular officers and INS officers at ports of entry require such a statement.

An alien planning to travel temporarily outside the United States should be certain to have all necessary documents for entry into all countries he or she intends to visit and should ascertain whether the H visa stamped in his or her passport is valid for reentry. If the visa needs to be extended, it will be necessary for the alien to present the passport, Form I-797, and a letter confirming current employment to a U.S. consular officer outside the United States.

It is possible to have an H visa reissued in the United States. [22 CFR 41.111(b)(2)] The alien must send the passport, Form I-94, Form I-797, a completed Form OF-156 (Nonimmigrant Visa Application), and a signed passport-size photograph to the Visa Office, Bureau of Consular Affairs, Department of State, Washington, D.C. 20520. A fee is required, the amount depending on reciprocity arrangements with the country of the alien's nationality. Precise requirements for reissuance of H visas, including the amount of the fee, may be obtained by telephoning the Visa Office at (202) 663-1213.

An H visa may be considered to be automatically extended upon application for reentry to the United States if the alien is maintaining lawful status, is returning from Canada or Mexico after a visit of not more than 30 days, has a valid Form I-94, does not require a waiver of inadmissibility under section 212(d)(3) of the Act, and is returning to the United States to resume H status. [22 CFR 41.112(d)]

10.12 Taxes

The employment of an H alien is not excluded from Social Security coverage and is therefore subject to Social Security employee tax.Income tax is paid on income derived from employment in H status, unless tax exemption is specifically provided by treaty or convention. Resident or nonresident status for tax purposes is determined by the "substantial presence" test. H aliens generally are classified as resident aliens for tax purposes, which in many cases is an advantage over the J-1 status (see IRS publication 515, "Withholding on Nonresident Aliens and Foreign Corporations"). On the other hand, because resident aliens for tax purposes are taxed on their worldwide income, persons in H status who have income from non-U.S. sources should be advised to seek professional tax counsel.

10.13 Special Provisions for Canadian Professionals and Nurses

The North American Free Trade Agreement (NAFTA) facilitates temporary entry into the United States of Canadian citizens who possess at least a bachelor's degree in a specified field of endeavor in the agreement (Appendix 1603.D.1 to Annex 1603 of the NAFTA) and will be engaged in that endeavor for an employer in the United States. Appendix 1603.D.1, the text of which appears on the following page, includes college, university, and seminary teachers as well as research assistants and scientists. Registered nurses are also included on Appendix 1603.D.1. However, they are not required to possess a bachelor's degree; only a state or provincial license to engage in the profession of registered nursing is required.

To apply for admission to the United States under the NAFTA, the alien appears at a port of entry, including border points and international airports, into the United States with documentation to prove that he or she is a Canadian citizen, intends to engage in one of the occupations listed on Appendix 1603.D.1, and meets the criteria to perform the occupation at a professional level. A statement from the prospective employer in the United States outlining the position offered, salary offered, and anticipated length of stay along with diplomas, transcripts, or professional licenses will generally satisfy the immigration officer. A fee is charged.

The alien is admitted in TN status for a maximum period of 1 year. Extensions in increments of 1 year are allowable with no limitation on the number of years one can be in TN status. Spouses and minor Canadian citizen children are admitted for the same duration in TD status. Non-Canadian spouses and minor children must apply for a TD visa stamp at one of the United States consulates in Canada to accompany a TN and will be allowed to remain with the TN holder as long as the latter is in that status. Clearly, in light of the additional requirements now attached to obtaining an H-1A or H-1B visa, if an employer will be offering a nonimmigrant position to a Canadian citizen, a TN should be considered first. Not all professions are listed on Appendix 1603.D.1. It is wise to consult the schedule when the question of employing a Canadian citizen arises. [8 CFR 214.6 (d) (2) (ii)]

10.14 SPECIAL PROVISIONS FOR MEXICAN PROFESSIONALS AND NURSES

NAFTA also provides TN status for Mexican nationals; however, in addition to possessing the required degree or license in the specified fields of endeavor as listed in Annex 1603 (see Section 10.13), the agreement requires an employer of a Mexican citizen seeking TN status to file first Form I-129 (including a Labor Condition Application, duly reviewed by the U.S. DOL, or Labor Attestation for Nurses) at the INS Northern Service center in Nebraska. The Mexican citizen must then make formal nonimmigrant TN visa application for a TN visa stamp in his passport. The Mexican national must visit the consulate with Form I-797 TN approval notice and the employer statement that accompanied the Form I-129. Further, the agreement imposes an initial cap of 5,500 on the number of TN Mexican petitions that INS may approve each fiscal year. The agreement calls for the eventual drop of the cap after 10 years. This limit is separate from the 65,000 annual limit on admissions for H-1B visas.

APPENDIX 1603.D.1, ANNEX 1603, NORTH AMERICAN FREE TRADE AGREEMENT

PROFESSION	MINIMUM EDUCATIONAL REQUIREMENTS AND ALTERNATIVE CREDENTIALS
Accountant	Baccalaureate or Licenciatura degree; or C.P.A., C.A., C.G.A., or C.M.A.
Architect	Baccalaureate or Licenciatura degree; or state/provincial license.
Computer Systems Analyst	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Post Secondary Certificate and three years' experience.
Disaster relief insurance claims adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief.
Economist	Baccalaureate or Licenciatura degree.
Engineer	Baccalaureate or Licenciatura degree; or state/provincial license.
Forester	Baccalaureate or Licenciatura degree; or state/provincial license.
Graphic designer	Baccalaureate or Licenciatura degree; or post-secondary diploma and three years experience.
Hotel manager	Baccalaureate or Licenciatura degree in hotel/restaurant management; or post-secondary diploma or post-secondary certificate in hotel/restaurant management and three years experience in hotel/restaurant management.
Industrial designer	Baccalaureate or Licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience.
Interior designer	Baccalaureate or Licenciatura degree; or post-secondary diploma or post-secondary certificate and three years experience.
Land surveyor	Baccalaureate or Licenciatura degree or state/provincial/federal license.
Landscape architect	Baccalaureate or Licenciatura degree.
Lawyer (including Notary in the province of Quebec)	L.L.B., J.D., L.L.L., B.C.L, or Licenciatura degree (five years); or membership in a state/provincial bar.
Librarian	M.L.S., or B.L.S. (for which another Baccalaureate or Licenciatura degree was a prerequisite).
Management consultant	Baccalaureate or Licenciatura degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of speciality related to the consulting agreement.
	Baccalaureate or Licenciatura degree.
Mathematician (including statistician)	Baccalaureate or Licenciatura degree.
Range manager/ Range conservationist	Baccalaureate or Licenciatura degree.
Research assistant (working in a post-secondary educational institution)	
Scientific technician, technologist	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.
Social worker	Baccalaureate or Licenciatura degree.
Sylviculturist (including forestry specialist)	Baccalaureate or Licenciatura degree.
Technical publications writer	Baccalaureate or Licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience.
Urban planner (including geographer)	Baccalaureate or Licenciatura degree.
Vocational Counselor	Baccalaureate or Licenciatura degree.

PROFESSION	MINIMUM EDUCATIONAL REQUIREMENTS AND ALTERNATIVE CREDENTIALS
MEDICAL/ALLIED PROFESSIONALS	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.
Dietician	Baccalaureate or Licenciatura degree; or state/provincial license.
Medical laboratory technologist (Canada)/medical technologist (Mexico and the United States)	Baccalaureate or Licenciatura degree; or post-secondary diploma or post secondary certificate, and three years experience.
Nutritionist	Baccalaureate or Licenciatura degree.
Occupational therapist	Baccalaureate or Licenciatura degree; or state/provincial license.
Pharmacist	Baccalaureate or Licenciatura degree; or state/provincial license.
Physician (teaching or research only)	M.D., Doctor en Medicina; or state/provincial license.
Physiotherapist/physical therapist	Baccalaureate or Licenciatura degree; or state/provincial license.
Psychologist	State/provincial license; or Licenciatura degree.
Recreational therapist	Baccalaureate or Licenciatura degree.
Registered nurse	State/provincial license or Licenciatura degree.
Veterinarian	D.V.M.; D.M.V.; or Doctor en Veterinaria; or state/provincial license.
SCIENTIST	
Agriculturist (agronomist)	Baccalaureate or Licenciatura degree.
Animal breeder	Baccalaureate or Licenciatura degree.
Animal scientist	Baccalaureate or Licenciatura degree.
Apiculturist	Baccalaureate or Licenciatura degree.
Astronomer	Baccalaureate or Licenciatura degree.
Biochemist	Baccalaureate or Licenciatura degree.
Biologist	Baccalaureate or Licenciatura degree.
Chemist	Baccalaureate or Licenciatura degree.
Dairy scientist	Baccalaureate or Licenciatura degree.
Entomologist	Baccalaureate or Licenciatura degree.
Epidemiologist	Baccalaureate or Licenciatura degree.
Geneticist	Baccalaureate or Licenciatura degree.
Geochemist	Baccalaureate or Licenciatura degree.
Geologist	Baccalaureate or Licenciatura degree.
Geophysicist (including oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura degree.
Horticulturist	Baccalaureate or Licenciatura degree.
Meteorologist	Baccalaureate or Licenciatura degree.
Pharmacologist	Baccalaureate or Licenciatura degree.
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura degree.
Plant Breeder	Baccalaureate or Licenciatura degree.
Poultry scientist	Baccalaureate or Licenciatura degree.
Soil scientist	Baccalaureate or Licenciatura degree.
Zoologist	Baccalaureate or Licenciatura degree.
TEACHER	
College	Baccalaureate or Licenciatura degree.
Seminary	Baccalaureate or Licenciatura degree.
University	Baccalaureate or Licenciatura degree.

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Employer's Telephone No.
( )

4. Employer's FAX No.
( )

5. Employer's Address (No., Street, City, State, and ZIP Code)

OMB Approval No.: 1205-0310
Expiration Date: 11-30-97

6. Address Where Documentation Is Kept (If different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-digit Occupational Group Code (From Appendix 2): ________ (b) Job Title (Check Box if Part-Time): ______________ ☐

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source (see instructions)		(f) Period of Employment From	To	(g) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
______	$______	$______	☐SESA ☐Other: ______	______	______	______
______	$______	$______	☐SESA ☐Other: ______	______	______	______

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check **each** box to indicate that the employer will comply with **each** statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, I will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

☐ (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)

  ☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or

  ☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official ______ Signature ______ Date ______

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from ______________ through ______________.

Signature and Title of Authorized DOL Official ______ ETA Case No. ______ Date ______

Subsequent DOL Action: Suspended ______ (date) Invalidated ______ (date) Withdrawn ______ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1¼ hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of U.S. Employment Service, Department of Labor, Room N-4470 and/or the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210. (1205-0310).

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9035 (Rev. Dec. 1994)

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix 2 which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and its Source. Enter the prevailing wage rate in terms of the the amount per hour, week, year, etc. If the employer is replying on a wage determination obtained from a State Employment Security Agency, check the box marked "SESA." If the employer is using another source, check the "Other" box and specify such other source: i.e., published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed, e.g., "collective bargaining agreement," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area." (Only 1 box can be checked per line item).

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.731 through 655.734 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupation at the worksite. If such a strike or lockout occurs after this application is submitted, the employer must notify ETA within 3 days of the occurrence of such a strike or lockout and the application may not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BEST COPY AVAILABLE

THREE-DIGIT OCCUPATIONAL GROUPS
PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

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U. S. Department of Justice
Immigration and Naturalization Service

Application for Employment Authorization

Form I-765 (Rev. 04-25-95) N

INSTRUCTIONS FOR
APPLICATION FOR EMPLOYMENT AUTHORIZATION
Form I-765

The Immigration and Naturalization Service (INS) recommends that you retain a copy of your completed application for your records.

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PART 1. GENERAL.

Purpose of the Application. Certain aliens who are temporarily in the United States may file a Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD). Other aliens who are authorized to work in the United States without restrictions should also use this form to apply to the INS for a document evidencing such authorization. Please review Part 2 ELIGIBILITY CATEGORIES to determine whether you should use this form.

If you are a Lawful Permanent Resident, a Conditional Resident, or a nonimmigrant authorized to be employed with a specific employer under 8 CFR 274a.12(b), please do NOT use this form.

DEFINITIONS.

Employment Authorization Document (EAD): Form I-688; Form I-688A; Form I-688B; or any successor document issued by the INS as evidence that the holder is authorized to work in the United States.

Renewal EAD: an EAD issued to an eligible applicant at or after the expiration of a previous EAD issued under the same category.

Replacement EAD: an EAD issued to an eligible applicant when the previously issued EAD has been lost, stolen, mutilated, or the previously issued card contains erroneous information, such as a misspelled name.

Interim EAD: an EAD issued to an eligible applicant when the INS has failed to adjudicate an application within 90 days of receipt of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995. The interim EAD will be granted for a period not to exceed 240 days and is subject to the conditions noted on the document.

PART 2. ELIGIBILITY CATEGORIES.

The INS adjudicates a request for employment authorization by determining whether an applicant has submitted the required information and documentation, and whether the applicant is eligible. In order to determine your eligibility, you must identify the category in which you are eligible and fill in that category in question 16 on the Form I-765. Enter only one of the following category numbers on the application form.

NOTE: **Category (c)(13) is no longer available.** You may not renew or replace your EAD based on (c)(13). If you have an EAD based on that category, please review the categories below to determine if you are eligible under another category.

APPLICATIONS TO BE FILED AT SERVICE CENTERS.

Asylee, (granted asylum)--(a)(5). File your EAD application with a copy of the INS letter granting you asylum. It is not necessary to apply for an EAD as an asylee until 90 days before the expiration of your current EAD.

Refugee--(a)(3). File your EAD application with either a copy of your Form I-590, Registration for Classification as Refugee, approval letter or a copy of a Form I-730, Refugee/Asylee Relative Petition, approval notice.

Paroled as a Refugee--(a)(4). File your EAD application with a copy of your Form I-94, Departure Record.

Asylum Applicant (with a pending asylum application) who Filed for Asylum on or after January 4, 1995--(c)(8). If you filed a Form I-589, Request for Asylum and for Withholding of Deportation, on or after January 4, 1995, you must wait at least 150 days before you are eligible to apply for an EAD. If you file your EAD application early, it will be denied and you will have to file a new application. File your EAD application with:

- A copy of the INS acknowledgement mailer which was mailed to you; or
- Other evidence that your Form I-589 was filed with the INS; or
- Evidence that your Form I-589 was filed with an Immigration Judge at the Executive Office for Immigration Review (EOIR); or
- Evidence that your asylum application remains under administrative or judicial review.

Asylum Applicant (with a pending asylum application) who Filed for Asylum and Withholding of Deportation Prior to January 4, 1995 and is *NOT* in Exclusion or Deportation Proceedings–(c)(8). You may file your EAD application at any time; however, it will only be granted if the INS finds that your asylum application is not frivolous. File your EAD application with:

- A complete copy of your previously filed Form I-589; and
- A copy of your INS receipt notice; or
- A copy of the INS acknowledgement mailer; or
- Evidence that your Form I-589 was filed with EOIR; or
- Evidence that your asylum application remains under administrative or judicial review; or
- Other evidence that you filed an asylum application.

Asylum Applicant (with a pending asylum application) who Filed an Initial Request for Asylum Prior to January 4, 1995, and *IS IN* Exclusion or Deportation Proceedings–(c)(8). If you filed your Request for Asylum and Withholding of Deportation (Form I-589) prior to January 4, 1995 and you ARE IN exclusion or deportation proceedings, file your EAD application with:

- A date-stamped copy of your previously filed Form I-589; or
- A copy of Form I-221, Order to Show Cause and Notice of Hearing, or Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge; or
- A copy of EOIR-26, Notice of Appeal, date stamped by the Office of the Immigration Judge; or
- A date-stamped copy of a petition for judicial review or for *habeas corpus* issued to the asylum applicant; or
- Other evidence that you filed an asylum application with EOIR.

Asylum Applicant under the ABC Settlement Agreement–(c)(8). If you are an El Salvadoran or Guatemalan national eligible for benefits under the ABC settlement agreement, American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991), there are special instructions applicable to filing your Form I-765 which supplement these instructions. These instructions and the application can be obtained by asking for an "ABC packet" at your local INS office or by calling 1-800-755-0777.

Deferred Enforced Departure (DED)/Extended Voluntary Departure–(a)(11). File your EAD application with evidence of your identity and nationality.

F-1 Student Seeking Optional Practical Training in an Occupation Directly Related to Studies–(c)(3)(i). File your EAD application with a Certificate of Eligibility of Nonimmigrant (F-1) Student Status (Form I-20 A-B/I-20 ID) endorsed by a designated school official within the past 30 days.

F-1 Student Offered Off-Campus Employment under the Sponsorship of a Qualifying International Organization–(c)(3)(ii). File your EAD application with the international organization's letter of certification that the proposed employment is within the scope of its sponsorship and a Certificate of Eligibility of Nonimmigrant (F-1) Student Status–For Academic and Language Students (Form I-20 A-B/I-20 ID) endorsed by the designated school official within the past 30 days.

F-1 Student Seeking Off-Campus Employment Due to Severe Economic Hardship–(c)(3)(iii). File your EAD application with Form I-20 A-B/I-20 ID, Certificate of Eligibility of Nonimmigrant (F-1) Student Status–For Academic and Language Students; Form I-538, Certification by Designated School Official, and any evidence you wish to submit, such as affidavits, which detail the unforeseen economic circumstances that cause your request, and evidence you have tried to find off-campus employment with an employer who has filed a labor and wage attestation.

J-2 Spouse or Minor Child of an Exchange Visitor–(c)(5). File your EAD application with a copy of your J-1's (principal alien's) Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66). You must submit a written statement, with any supporting evidence showing, that your employment is not necessary to support the J-1 but is for other purposes.

M-1 Student Seeking Practical Training after Completing Studies–(c)(6). File your EAD application with a completed Form I-538, Application by Nonimmigrant Student for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment, Form I-20 M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status–For Vocational Students endorsed by the designated school official within the past 30 days.

Dependent of CCNAA E-1 Nonimmigrant–(c)(2). File your EAD application with the required certification from the American Institute in Taiwan if you are the spouse, or unmarried child, of an E-1 employee of the Coordination Council for North American Affairs.

Dependent of NATO Personnel–(c)(7). File your EAD application with a letter from the Department of Defense or NATO/SACLANT verifying your principal alien's status, your status, and your relationship to your principal alien.

N-8 or N-9 Nonimmigrant–(a)(7). File your EAD application with the required evidence listed in Part 3.

Family Unity Program–(a)(13). File your EAD application with a copy of the approval notice, if you have been granted status under this program. You may choose to file your EAD application concurrently with your Form I-817, Application for Voluntary Departure under the Family Unity Program. The INS may take up to 90 days from the date upon which you are granted status under the Family Unity Program to adjudicate your EAD application. If you were denied Family Unity status solely because your legalized spouse or parent first applied under the Legalization/SAW programs after May 5, 1988, file your EAD application with a new Form I-817 application and a copy of the original denial. However, if your EAD application is based on continuing eligibility under (c)(12), please refer to **Deportable Alien Granted Voluntary Departure**.

K-1 Nonimmigrant Fiance(e) of U.S. Citizen or K-2 Dependent–(a)(6). File your EAD application if you are filing within 90 days from the date of entry. This EAD cannot be renewed. Any EAD application other than for a replacement must be based on your pending application for adjustment under (c)(9).

Citizen of Micronesia or the Marshall Islands or Palau–(a)(8). File your EAD application if you were admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories.

B-1 Nonimmigrant who is the personal or domestic servant of a nonimmigrant employer–(c)(17)(i). File your EAD application with:

- Evidence from your employer that he or she is a B, E, F, H, I, J, L, M, O, P, R or TN nonimmigrant and you were employed for at least one year by the employer before the employer entered the United States or your employer regularly employs personal and domestic servants and has done so for a period of years before coming to the United States; and
- Evidence that you have either worked for this employer as a personal or domestic servant for at least one year or, evidence that you have at least one year's experience as a personal or domestic servant; and
- Evidence establishing that you have a residence abroad which you have no intention of abandoning.

B-1 Nonimmigrant Domestic Servant of a U.S. Citizen–(c)(17)(ii). File your EAD application with:

- Evidence from your employer that he or she is a U.S. Citizen; and
- Evidence that your employer has a permanent home abroad or is stationed outside the United States and is temporarily visiting the United States or the citizen's current assignment in the United States will not be longer than four (4) years; and
- Evidence that he or she has employed you as a domestic servant abroad for at least six (6) months prior to your admission to the United States.

B-1 Nonimmigrant Employed by a Foreign Airline–(c)(17)(iii). File your EAD application with a letter, from the airline, fully describing your duties and indicating that your position would entitle you to E nonimmigrant status except for the fact that you are not a national of the same country as the airline or because there is no treaty of commerce and navigation in effect between the United States and that country.

APPLICATIONS TO BE FILED AT LOCAL INS OFFICES.

Temporary Protected Status (TPS)–(a)(12). File your EAD application with Form I-821, Application for Temporary Protected Status.

- Initial TPS-based application only, include evidence of identity and nationality as required by the Form I-821 instructions.
- Extension of TPS status, include a copy (front and back) of your last available TPS document: EAD, Form I-94 or approval notice.
- Registration for TPS only without employment authorization, file the Form I-765, Form I-821, and a letter indicating that this form is for registration purposes only. No fee is required for the Form I-765 filed as part of TPS registration. (Form I-821 has separate fee requirements.)

Applying for Temporary Protected Status (TPS)/Temporary Treatment Benefits–(c)(19). ***File your EAD application with your TPS application, Form I-821.*** If you are using this application to register for TPS and do not want to work in the United States, you must submit a letter indicating this application is for registration purposes only. No fee is required to register.

Granted Withholding of Deportation–(a)(10). File your EAD application with a copy of the Immigration Judge's order. It is not necessary to apply for a new EAD until 90 days before the expiration of your current EAD.

Dependent of A-1 or A-2 Foreign Government Officials–(c)(1). File your EAD application with a Form I-566, Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A-1 or A-2 Official or Employee of Diplomatic or Consular Establishment or G-4 Officer or Employee of International Organization, with the Department of State endorsement.

Dependent of G-1, G-3 or G-4 Nonimmigrant–(c)(4). File your EAD application with a Form I-566, Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A-1 or A-2 Official or Employee of Diplomatic or Consular Establishment or G-4 Officer or Employee of International Organization, with the Department of State endorsement if you are the dependent of a qualifying G-1, G-3 or G-4 officer of, representative to, or employee of an international organization and you hold a valid nonimmigrant status.

Adjustment Applicant–(c)(9). File your EAD application with a copy of the receipt notice or other evidence that your Form I-485, Application for Permanent Residence, is pending. You may file Form I-765 together with your Form I-485.

Applicant for Suspension of Deportation–(c)(10). File your EAD application with evidence that your Form I-256A, Application for Suspension of Deportation, is pending.

Paroled in the Public Interest–(c)(11). File your EAD application if you were paroled into the United States for emergent reasons or reasons strictly in the public interest.

Deportable Alien Granted Voluntary Departure–(c)(12). File your EAD application with a copy of the order or notice granting voluntary departure, and evidence establishing your economic need to work.

Deferred Action–(c)(14). File your EAD application with a copy of the order, notice or document placing you in deferred action and evidence establishing economic necessity for an EAD.

Adjustment Applicant Based on Continuous Residence Since January 1, 1972–(c)(16). File your EAD application with your Form I-485, Application for Permanent Residence; a copy of your receipt notice; or other evidence that the Form I-485 is pending.

Final Order of Deportation–(c)(18). File your EAD application with a copy of the order of supervision and a request for employment authorization which may be based on, but not limited to the following:

- Existence of economic necessity to be employed;
- Existence of a dependent spouse and/or children in the United States who rely on you for support; and
- Anticipated length of time before you can be removed from the United States.

PART 3. REQUIRED DOCUMENTATION WITH EACH APPLICATION.

All applications must be filed with the documents required below, in addition to the evidence required for the category listed in Part 2 ELIGIBILITY CATEGORIES, with fee, if required.

If you are required to show economic necessity for your category (See Part 2), submit a list of your assets, income and expenses.

Please assemble the documents in the following order:

Your application with the filing fee. See Part 4 FEE for details.

If you are mailing your application to the INS, you must also submit:

- Form I-765 Signature Card. If one is not enclosed with your application, ask your local INS office for one. Sign the card in the blue box marked "signature". Your signature must fit within the blue box. DO NOT fold this card when you mail your application.
- A copy of Form I-94 Departure Record (front and back), if available.
- A copy of your last EAD (front and back).
- 2 photos with a white background taken no earlier than 30 days before submission to the INS. They should be unmounted; printed on thin paper; glossy; and unretouched. The photos should show a three-quarter front profile of the right side of your face, with your right ear visible. Your head should be bare unless you are wearing a headdress as required by a religious order to which you belong. The photo should not be larger than 1 ½ X 1 ½ inches, with the distance from the top of the head to just below the chin about 1¼ inches. Lightly print your name and your A#, if known, on the back of each photo with a pencil.

PART 4. FEE.

Applicants must pay a fee of $70 to file this form unless noted below. If a fee is required, it will not be refunded. Pay in the exact amount. Checks and money orders must be payable in U.S. currency. Make check or money order payable to "Immigration and Naturalization Service." If you live in Guam make your check or money order payable to "Treasurer, Guam." If you live in the U.S. Virgin Islands make your check or money order payable to "Commissioner of Finance of the Virgin Islands." There will be an additional charge if your check is not honored.

Please do not send cash in the mail.

Initial EAD: If this is your initial application and you are applying under one of the following categories, a filing fee is not required:

- (a)(3) Refugee;
- (a)(4) Paroled as Refugee;
- (a)(5) Asylee;
- (a)(7) N-8 or N-9 nonimmigrant;
- (a)(8) Citizen of Micronesia, Marshall Islands or Palau.
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure;
- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel; or
- (c)(8) Applicant for asylum [an applicant filing under the special ABC procedures must pay the fee].

Renewal EAD: If this is a renewal application and you are applying under one of the following categories, a filing fee is not required:

- (a)(8) Citizen of Micronesia, Marshall Islands, or Palau.
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure; or
- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel.

Replacement EAD: If this is your replacement application and you are applying under one of the following categories, a filing fee is not required:

- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel.

You may be eligible for a fee waiver under 8 CFR 103.7(c).

The INS will use The Community Service Administration Income Poverty Guidelines ("Poverty Guidelines") found at 45 CFR 1060.2 as the basic criteria in determining the applicant's eligibility when economic necessity is identified as a factor.

The Poverty Guidelines will be used as a guide, but not as a conclusive standard, in adjudicating fee waiver requests for employment authorization applications requiring a fee.

PART 5. WHERE TO FILE.

If your response to question 16 is:

(a)(3), (a)(4), (a)(5), (a)(7), or (a)(8)

mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(6), (a)(11), (a)(13),
(c)(2), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), (c)(5), (c)(6), (c)(7), (c)(8),
(c)(17)(i), (c)(17)(ii), or (c)(17)(iii)

mail your application based on your address to the appropriate Service Center:

If you live in: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia or the U.S. Virgin Islands, mail your application to:

INS Service Center
P.O. Box 9765
St. Albans, VT 05479-9765

If you live in: Arizona, California, Guam, Hawaii or Nevada, mail your application to:

INS Service Center
P.O. Box 10765
Laguna Niguel, CA 92607-0765

If you live in: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, N. Carolina, Oklahoma, S. Carolina, Tennessee or Texas, mail your application to:

INS Service Center
P.O. Box 152122, Department A
Irving, TX 75015-2122

If you live elsewhere in the U.S., mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(10), (a)(12),
(c)(1), (c)(4), (c)(10), (c)(11), (c)(12), (c)(14), (c)(16),
(c)(18), or (c)(19)

apply at the local INS office having jurisdiction over your place of residence.

If your response to question 16 is (c)(9), file your application at the same local INS office or Service Center where you submitted your adjustment application.

If your response to question 16 is (c)(8) under the special ABC filing instructions and you are filing your asylum and EAD applications together, mail your application to the office where you are filing your asylum application.

PART 6. PROCESSING INFORMATION.

Acceptance. An application filed without the required fee, evidence, signature or photographs (if required) will be returned to you as incomplete. You may correct the deficiency and resubmit the application; however, an application is not considered properly filed until the INS accepts it. If your application is complete and filed at an INS Service Center, you will be mailed a Form I-797 receipt notice.

Decision on your application.

- **Approval.** If approved, your EAD will either be mailed to you or you may be required to appear at your local INS office to pick it up.
- **Request for evidence.** If additional information or documentation is required, a written request will be sent to you specifying the information or advising you of an interview.
- **Denial.** If your application cannot be granted, you will receive a written notice explaining the basis of your denial.

No decision

- **Interim EAD.** If you have not received a decision within 90 days of receipt by the INS of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995, you may obtain interim work authorization by appearing in person at your local INS district office. You must bring proof of identity and any notices that you have received from the INS in connection with your application for employment authorization.

PART 7. OTHER INFORMATION.

Penalties for Perjury. All statements contained in response to questions in this application are declared to be true and correct under penalty of perjury. Title 18, United States Code, Section 1546, provides in part:

> . . . Whoever knowingly makes under oath, or as permitted under penalty of perjury under 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

Authority for Collecting this Information. The authority to require you to file Form I-765, Application for Employment Authorization, when applying for employment authorization is found at 8 U.S.C. 274A(b)(1)(C)(iii). Information you provide on your Form I-765 is used to determine whether you are eligible for employment authorization and for the preparation of your Employment Authorization Document if you are found eligible. Failure to provide all information as requested may result in the denial or rejection of this application. The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the INS investigations.

Paperwork Reduction Act. The Immigration and Naturalization Service (INS) tries to create forms and instructions which are accurate and easily understood. Often this is difficult because immigration law can be very complex. The public reporting burden for this form is estimated to average three (3) hours and twenty-five (25) minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The INS welcomes your comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, 425 Eye Street, Room 5307, Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-0163, Washington, D.C. 20503.

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0163
Application for Employment Authorization

Do Not Write In This Block

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 ______		

☐ Application Approved. Employment Authorized / Extended (Circle One) ____________ (Date).
until ____________ (Date).
Subject to the following conditions: ____________
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (14), (18) and 8 CFR 214.2(f)

I am applying for:
☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Renewal of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship/Nationality

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (Month/Day/Year)

7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used)

10. Alien Registration Number (A-Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from INS?
☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)
Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to Part 2 of the instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).
Eligibility under 8 CFR 274a.12
( ) ( ) ( )

Certification

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the Instructions in Part 2 and have identified the appropriate eligibility category in Block 16.

Signature Telephone Number Date

Signature of Person Preparing Form If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

APPENDIX 6

Department of Labor Regional Offices

Region I
One Congress St., 10th Floor
Boston, MA 02114-2023
(617) 565-4446

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II
201 Varick St., Room 755
New York, NY 10014
(212) 337-2186

States served: New York, New Jersey, Puerto Rico, U.S. Virgin Islands

Region III
Post Office Box 8796
Philadelphia, PA 19101
(215) 596-6363

States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV
1371 Peachtree St., NE
Atlanta, GA 30309
(404) 347-3938

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V
230 S. Dearborn St., Room 605
Chicago, IL 60604
(312) 353-1550

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI
525 Griffin St., Room 311
Dallas, TX 75202
(214) 767-4989

States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII
1100 Main , Room 1050
Kansas City, MO 64105
(816) 426-3796

States served: Iowa, Kansas, Missouri, Nebraska

Region VIII
1999 Broadway, Room 1780
Denver, CO 80202
(303) 391-5742

States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX
71 Stevenson St., Room 805
San Francisco, CA 94105
(415) 744-7618

States served: Arizona, California, Guam, Hawaii, Nevada

Region X
1111 Third Avenue
Suite 900
Seattle, WA 98101-3212
(206) 553-7700

States served: Alaska, Idaho, Oregon, Washington

State Employment Security Agencies (alphabetical by state)	**DOL region**
Department of Industrial Relations 649 Monroe Street Industrial Relations Building Montgomery, AL 36130 (205) 242-8900	IV
Employment Security Division State of Alaska PO Box 25509 Juneau, AK 99802-5509 (907) 465-2712	X

Department of Economic Security IX
P.O. Box 6123-010A
Phoenix, AZ 85005
(602) 542-5678

Employment Security VI
2 Capitol Mall
P.O. Box 2981
Little Rock, AR 72203-2981
(501) 682-2121

Employment Development Department IX
P.O. Box 942880, MIC 83
Sacramento, CA 94280-0001
(916) 654-8210

Department of Labor and Employment VIII
600 Grant Street
Suite 900
Denver, CO 80203-3528
(303) 837-3801

Connecticut Employment Security Division I
Labor Certification Unit
200 Folly Brook Boulevard
Weathersfield, CT 06109-1114
(203) 566-4384

Delaware Department of Labor III
820 North French
Carvel State Building
6th Floor
Wilmington, DE 19801
(302) 577-2713

D.C. Department of Employment Services III
Employment Security Building
Room 600
500 C Street, NW
Washington, DC 20001
(202) 639-1001

Dept of Labor and Employment Security IV
Hartman Building
Suite 303
2012 Capital Circle, SE
Tallahassee, FL 32399-2152
(904) 922-7021

Georgia Department of Labor IV
Sussex Place
148 International Boulevard, NE
Atlanta, GA 30303
(404) 656-3011

Dept. of Labor and Industry Relations IX
830 Punch Bowl St.
Room 320
Honolulu, HI 96831
(808) 586-8844

Department of Employment X
State of Idaho
317 Main Street
Boise, ID 83735
(208) 334-6110

Department of Employment Security V
401 South State Street
Room 615
Chicago, IL 60605
(312) 793-5700

Indiana Department of Employment V
and Training Services
10 North Senate Avenue
Room 331
Indianapolis, IN 46204
(317) 232-3270

Department of Employment Services VII
1000 East Grand Avenue
Des Moines, IA 50319
(515) 281-5365

Department of Human Resources VII
401 Topeka Boulevard
Topeka, KS 66603-3182
(913) 296-7474

Department for Employment Services IV
275 East Main Street, 2nd Floor West
Frankfort, KY 40621
(502) 564-5331

Dept. of Employment and Training VI
P.O. Box 94040
Baton Rouge, LA 70804-9094
(504) 342-3011

Bureau of Employment Security I
P.O. Box 309
Augusta, ME 04330
(207) 287-3788

Department of Economic and III
Employment Development
1100 North Eutaw Street
Room 600
Baltimore, MD 21201
(410) 333-5070

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SECTION 11

R Status: Temporary Religious Workers

Pravinchandra J. Patel

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Forms and Documents Discussed in this Chapter

I-129	Petition for Nonimmigrant Worker
I-94	Arrival-Departure Record

11.1 GENERAL DESCRIPTION OF R CLASSIFICATION

The nonimmigrant "R" visa category was first introduced by section 209 of the Immigration Act of 1990, Public Law 101-649, effective 1 October 1991. It was added as paragraph (R) to section 101(a)(15) of the Immigration and Nationality Act, as amended (hereinafter referred to as "INA"), to facilitate the temporary entry of certain religious workers into the United States.

As specified in the statute, an alien who, for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of religious nature or significance for a period not to exceed 5 years. [8 CFR 214.2(r)(1)]

The admission symbol for the principal nonimmigrant religious worker is R-1; the admission symbol for the worker's spouse and unmarried children under twenty-one years of age is R-2. [8 CFR 214.2(r)(4)]

11.2 PURPOSES FOR COMING TO THE UNITED STATES

The INS regulations specifically provide that, to qualify for R visa classification, the alien must be coming to the United States for one of the following purposes: (1) solely to carry on the vocation of a minister of the religious denomination; or (2) to work for the religious organization at the request of the organization in a professional capacity; or (3) to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation. [8 CFR 214.2(r)(1)] Individuals performing any kind of lay work do not qualify for R visa classification even if it is performed in or for a religious organization.

11.3 DEFINITIONS OF CERTAIN TERMS

The INS regulations pertaining to R visa category use certain terms or phrases, such as "Minister," "Professional capacity," "Religious denomination," "Religious occupation," "Religious vocation," "Bona fide nonprofit religious organization," and "Bona fide organization which is affiliated with the religious denomination."

"Minister" means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term "minister" does not include a lay preacher not authorized to perform such ministerial duties.

If the religious worker is coming to the United States to be a minister, a detailed description of ministerial duties should be provided, demonstrating that the alien is authorized to conduct religious worship and perform other duties performed by authorized members of the clergy of that denomination. [8 CFR 214.2(r)(2)]

According to administrative case law, a commissioned officer of the Salvation Army is a minister; see Matter of N, 5 I. & N. Dec. 173 (C.O. 1953). A priest of the Salesian Society of the Catholic Church whose duties included teaching in seminaries and boarding schools and teaching some academic subjects besides religion, is also a minister, see Matter of Z, 5 I. & N. Dec. 700 (C.O. 1954). "Pujaris" (priests) of a Hindu religion who work in a Hindu temple are also recognized as ministers and have had success being admitted to the United States under the R classification.

"Professional capacity" means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required. [8 CFR 214.2(r)(2)] The statute does not require the degree to come from a U.S. institution, and the regulations explicitly state that the INS will recognize an equivalent foreign degree. There is no experience equivalent to a bachelor's degree. Religious workers with a baccalaureate degree will not be considered to be working in a professional capacity unless it is further established that such a degree is necessary for performing the stated religious tasks. [8 CFR 214.2(r)(3)(ii)(C)(2)].

"Religious denomination" means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. The regulations further clarify that, for the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination. [8 CFR 214.2(r)(2)]

Although the statute does not define the terms "religious vocation" or "religious occupation," the INS regulations throw considerable light on these terms.

"Religious vocation" means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters. [8 CFR 214.2(r)(2)] Taking of vows is not a sine qua non to establish a calling to religious life. However, the INS recognizes that there may be faiths in which a calling to religious life may be demonstrated by comparable means other than taking vows.

"Religious occupation" means an activity which relates to a traditional religious function. Examples of persons in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include persons involved solely in the solicitation of donations. [8 CFR 214.2(r)(2)]

These regulatory definitions are based upon the legislative history of the R provision in the statute, which admonishes that the religious worker provisions relate to traditional religious functions, and that the vocation or occupation must have religious significance.

"Bona fide nonprofit religious organization" means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status. [8 CFR 214.2(r)(2)] Examples include the Roman Catholic Church, the Armenian Church, and the Swaminarayan sect of Hinduism.

"Bona fide organization which is affiliated with the religious denomination" means an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. [8 CFR 214.2(r)(2)] An academic institution or charitable organization closely associated with a religious denomination would qualify.

If the alien religious worker is to work for a bona fide organization which is affiliated with a religious denomination, then the existence of the affiliation or close association must be clearly shown. The organization is not required to be in a subordinate or dependent position with the religious denomination.

11.4 PETITION PROCESS

Unlike the petition process for aliens seeking such other nonimmigrant classification as H, L, O, or P, which require a prior petition to and approval from the INS in the United States, no prior petition, labor certification, or prior approval is required for R visa classification. An eligible alien religious worker, or a sponsoring U.S. organization, or a foreign religious organization, may apply directly to the American Consul for R visa classification for the alien worker, with proper supporting documentation. R nonimmigrants are not issued an Employment Authorization Document by INS as employment with a specific employer is incidental to R status. There is no prescribed form of application; an application in the form of a letter with adequate information and supporting documentation will suffice.

Such application should state that: (i) the religious denomination overseas is a bona fide nonprofit religious organization; (ii) it has a bona fide nonprofit religious organization in the United States; (iii) both the foreign and United States religious organizations belong to the same religious denomination; (iv) either such organizations are tax-exempt or are eligible for tax-exempt status; (v) the alien religious worker at least has the required two years of membership in the religious denomination immediately preceding the time of application for admission; (vi) the alien religious worker is coming to the United States for any of the specified purposes of religious nature or significance (see Section 11.2); and (vii) any arrangements made for remuneration for services to be rendered by the alien, including the amount and source of any salary, a description of any other types of remuneration to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered. [8 CFR 214.2(r)(3)]

The arrangement made for paying the remuneration for the alien's services may include contributions from a parent or other affiliated organization(s), if the employing organization is unable to demonstrate its own financial ability; or such contributions may come even from other members or parishioners of the denomination.

Supporting documentation should include such papers as: (1) a statement of the sponsoring U.S. organization or that of the foreign religious organization, depending upon which organization files the application; (2) a copy of IRS tax-exempt status for U.S. organization, if one is available, or, documents which demonstrate eligibility for tax exemption; (3) copies of the U.S. organization's financial statements; (4) a brochure or other document describing the organizations and their activities; and (6) copies of the alien worker's qualifications, particularly religious qualifications, if any. A religious worker's diplomas or degrees are important if the R visa application claims that he or she will be engaged in a professional capacity.

11.5 PERIOD OF STAY AND EXTENSION OF STATUS

A religious worker may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed 5 years. However, the initial admission of a religious worker, his or her spouse, and unmarried children under 21 years of age, cannot exceed 3 years. [8 CFR 214.2(r)(4)]

Form I-94, Arrival-Departure Record, is provided to every R nonimmigrant at the time of arrival. The I-94 for the principal is endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. [8 CFR 214.2(r)(4)] The examining officer of the INS may request any appropriate additional evidence, such as financial statements of the sponsoring organization. Such financial statements may become necessary to demonstrate that the organization has the financial ability to compensate the alien worker for his services.

If the services of the alien religious worker are needed beyond the initial period granted, the U.S. organization may use Form I-129 (Petition for a Nonimmigrant Worker), along with the appropriate fee, to apply for extension of stay of the worker and his or her dependents in the United States. This petition is filed at the Service Center having jurisdiction over the place of employment. An extension of stay may be authorized for a period of up to 2 years. The worker's total period of stay cannot exceed 5 years. A petition for extension must be accompanied by a letter from the employer confirming the worker's continuing eligibility for classification as an R-1 nonimmigrant. [8 CFR 214.2(r)(5)]

11.6 CHANGE OF NONIMMIGRANT CLASSIFICATION

A prospective nonimmigrant religious worker who is outside of the United States can apply directly to an American Consul for an R visa status. If such alien is temporarily within the United States in any lawful nonimmigrant status and desires to change his or her nonimmigrant status to classification as a nonimmigrant religious worker, the regulations permit such change of classification.

Form I-129 (Petition for a Nonimmigrant Worker), together with the documentation necessary to establish eligibility for R nonimmigrant status, should be filed, with fee, to the INS service center having jurisdiction over the place of employment. [Supplementary Information, *Federal Register*, 27 December 1991]

11.7 CHANGE OF EMPLOYER

If a different or additional organizational unit of the same religious denomination seeks to employ or engage the services of a religious worker who is already in the United States on R nonimmigrant status, then a new petition on Form I-129 must be filed, with the appropriate fee, at the INS service center having jurisdiction over the place of employment. The new petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker. [8 CFR 214.2(r)(6)]

Any unauthorized change to a new religious organizational unit constitutes a failure to maintain nonimmigrant status.

11.8 Future Limitation on Stay

An alien religious worker who has spent 5 years in the United States in R nonimmigrant status, may not be readmitted to the United States under the R visa category unless the alien has resided and been physically present outside the United States for the immediate prior year. Such alien workers are not precluded from visiting the United States for business or pleasure as long as the visit is brief. Such visits do not end the period during which an alien is considered to have resided and been physically present outside the United States, but time spent during such visits does not count toward the one-year foreign residence requirement. [8 CFR 214.2(r)(7)]

11.9 Differences between B-1 and R-1 Visas

Before the creation of the R visa classification, many religious workers came to the United States on B-1 visas, especially those who came for short stays and who did not receive wages or salary remuneration from a U.S. employer. Even after the creation of the R visa category, INS indicated that the B-1 was still appropriate for religious workers. B-1 visitors, unlike R visa holders, however, cannot legally accept full-time, part-time, or temporary employment for which they are paid by a U.S. employer. They may accept a reimbursement for expenses. The B-1 visa may not be used for a religious worker if the services required are for longer than the validity of the visa.

11.10 Dependent Spouse and Children

The R religious worker's spouse and unmarried children under 21 years of age are entitled to the same nonimmigrant classification and length of stay as the religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. As stated in Section 11.1, the visa symbol for such spouse and children is R-2. [8 CFR 214.2(r)(8)]

Neither the spouse nor any child of the principal religious worker is entitled to accept employment while in the United States in R-2 nonimmigrant status. Any unauthorized employment would be a violation of their nonimmigrant status. However, such R-2 dependents may become students while in the United States. This is consistent with other nonimmigrant dependent classifications, such as H-4 (for spouse and children of H-1, or H-2, or H-3 nonimmigrants) and L-2 (for spouse and children of L-1 nonimmigrants). Study is permissible for all such dependent aliens. [Supplementary Information, *Federal Register*, 27 December 1991]

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SECTION 12

Other Nonimmigrant Classes

Sam Bernsen

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- 12.2.1.1 A-1 status (diplomat and immediate family)
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Forms and Documents Discussed in This Section

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I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—for Academic and Language Students
I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—for Vocational Students
I-94	Arrival/Departure Record
I-129	Petition for a Nonimmigrant Worker

I-130	Immigrant Petition for Relative, Fiancée, or Orphan
I-539	Application to Extend/Change Nonimmigrant Status
I-765	Application for Employment Authorization
OF-156	Nonimmigrant Visa Application
I-797	Notice of Action
IAP-66	Certificate of Eligibility for Nonimmigrant (J-1) Exchange Visitor Status

12.1 GENERAL

The Act describes 19 general classes of nonimmigrants in sections 101(a)(15)(A) through (S). One class has five subdivisions, and some classes include dependents who are accompanying or following to join the principal alien.

An applicant for a nonimmigrant visa (other than an H-1, L, O-1, or P applicant) is presumed to be an intending immigrant until the applicant establishes to the satisfaction of the consular officer that he or she is entitled to a nonimmigrant visa according to the terms of section 101(a)(15) of the Act, or as otherwise established by law or treaty. The burden of proof is on the applicant to establish eligibility for the particular nonimmigrant visa for which he or she is applying. [Act 214(b) and 291; 22 CFR 41.11(a)]

Except for nonimmigrants in classes H-1B, H-2B, and H-3 special-education exchange visitor or trainees, there are no limitations on the number of nonimmigrant visas that can be issued in a given year, as there are in the case of immigrant visas. The numerical limits are: H-1B (65,000); H-1B defense project workers (100); H-2B (66,000); and H-3 special-education trainees (50). The numerical limits apply to the principals only. Under NAFTA not more than 5,500 citizens of Mexico can be classified as TN nonimmigrants annually. Before a nonimmigrant visa is issued by a U.S. consular officer, and before a change of nonimmigrant status is approved in the United States by an INS officer, the officer must be satisfied that the alien is a bona fide nonimmigrant. The officer must also be satisfied that the alien, if in a specified class, has a residence in his or her home country that he or she has no intention of abandoning, and that the alien intends to enter the United States, or change status, solely for a purpose consistent with the terms of the visa or nonimmigrant status being sought. Aliens in the following classes must satisfy the residence requirement: B, F, H-1B (defense project), H-2, H-3, J, M, O-2, P, and Q.

Employment of a temporary nature is permitted under most nonimmigrant classifications, although it is severely restricted for some classes. "Temporary" may mean a relatively short period of time, or it may mean a period of 5 years or more under certain conditions. Those classes in which employment is not permitted under any circumstances are B-2, C, D, F-2, H-4, L-2, M-2, O-3, P-4, R-2, TD (NAFTA dependent), and transit-without-visa (TWOV). For a complete listing of the classes of nonimmigrants authorized to be employed and the conditions of that employment, see 8 CFR 274a.12. This section of the regulations was modified and expanded as a result of the employer-sanctions provisions of the Immigration Reform and Control Act of 1986.

12.2 NONIMMIGRANT CLASSIFICATIONS LESS COMMONLY ENCOUNTERED IN EDUCATIONAL INSTITUTIONS

12.2.1 A status (diplomat, other government official, and related personnel)

12.2.1.1 A-1 status (diplomat and immediate family)

An A-1 alien is defined as "an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government ... and the members of the alien's immediate family." [Act 101(a)(15)(A)(i)] A-1 aliens are admitted for the duration of their status in this classification. [8 CFR 214.2(a)(1)]

A foreign government official in A-1 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(1)] The spouse and certain offspring residing with an A-1 diplomat may apply for employment permission, using Form I-566 and Form I-765. The regulations prescribe strict limitations on the approval of such employment. [8 CFR 214.2(a) and 8 CFR 274a.12(c)(1)] A-1 aliens may enroll in school full or part time while maintaining their A-1 status.

12.2.1.2 A-2 status (other government official and immediate family)

A-2 aliens are defined as "other officials and employees who have been accredited by a foreign government ... and the members of their immediate families." [Act 101(a)(15)(A)(ii)] A-2 aliens are admitted for the duration of their status in this classification. [8 CFR 214.2(a)(1)]

The principal alien in A-2 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(1)] The A-2 alien's spouse and certain offspring who reside with a principal A-2 government official may apply for employment permission under the same terms as those described above for A-1 family members. A-2 government officials and members of immediate family may attend school full or part time while maintaining their A-2 status.

12.2.1.3 A-3 status (attendant, servant, or personal employee of alien classified as A-1 or A-2, and immediate family)

A-3 status is accorded to "attendants, servants, personal employees, and members of their immediate families, of the officials and employees" who are in A-1 or A-2 status. [Act 101(a)(15)(A)(iii)] Aliens in A-3 status are admitted to the United States for an initial period of not more than 3 years and may be granted extensions of temporary stay in increments of not more than 2 years. [8 CFR 214.2(a)(1)]

An alien in A-3 status may be employed only by the foreign government official. The A-3 immediate family members of a foreign government official may not be employed in A-3 classification. A-3 aliens may attend school full or part time while maintaining their A-3 status.

12.2.2 B status (visitor)

A nonimmigrant in B status is described as "an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he [or she] has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." [Act 101(a)(15)(B)] B visitors may be admitted to the United States for an initial period of no longer than 1 year and may be granted extensions of stay in increments no longer than 6 months each. [8 CFR 214.2(b)] The B classification is divided into two types, visitors for business (B-1) and visitors for pleasure (B-2). Under certain circumstances a B-2 visa can also be issued to prospective students (see Section 12.2.2.3). In addition, a B-1/B-2 visa is sometimes issued. These types are discussed separately below.

12.2.2.1 B-1 status (visitor for business)

According to federal regulations, the term "business" as used in the definition above refers to

> legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire.... An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a ... visitor for business. [22 CFR 41.31(b)]

In its *Foreign Affairs Manual* (FAM), which gives detailed instructions and guidelines to visa-issuing officers, the Department of State has elaborated upon the types of people who can be issued B-1 visas. Included are:

- aliens coming to engage in commercial transactions that do not involve gainful employment in the United States, to participate in scientific, educational, professional, or business conventions or conferences, or to undertake independent research
- an alien already employed abroad coming to undertake training who would be classifiable as H-3, but who will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to temporary stay
- an alien qualified to perform H-1B services who will receive no remuneration from a U.S. source. (The INS and State Department published a proposal to terminate this policy.)

B-1 visitors cannot legally accept full-time, part-time, or temporary teaching or research positions or other employment for which they are paid by a U.S. institution. B-1 visitors who accept such positions violate the terms of their status and become subject to deportation. However, it is legal for an educational institution to pay a subsistence allowance to a B-1 visitor who performs a temporary service, to reimburse expenses, or to pay an honorarium that does not exceed travel and living costs.

12.2.2.2 B-2 status (visitor for pleasure)

The term "pleasure" as used in section 101(a)(15)(B) of the Act "refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature." [22 CFR 41.31(b)(2)] A B-2 visitor who is issued a Form I-94 "will be admitted for a minimum period of 6 months, regardless of whether less time is requested, provided the passport is valid for at least 6 months into the future. Exceptions to the minimum 6-month admission may be made only with the specific approval of the district director." [8 CFR 214.2(b)(2)]

A B-2 visa can be issued to an alien who wishes to enter the United States to marry an alien already here in nonimmigrant status.

A Canadian who enters the United States and is not issued a Form I-94 is considered to be in B status (visitor for business or pleasure) with permission to remain in the United States for 6 months.

Aliens in B-2 status are not permitted to accept employment. Applicants for B-2 visas are expected to present the consul with evidence that they have financial support adequate for their contemplated stay in the United States.

12.2.2.3 B-2 status (prospective student)

A B-2 visa can also be issued to a person who (1) intends to become an F-1 student but has not yet chosen a particular school and wishes to visit more than one school before making a selection; (2) has been accepted as an F-1 student by a particular U.S. school and has a Form I-20A-B from that school but intends to enter the United States more than 90 days before school opens; (3) has credible evidence of admission to a U.S. school as an

F-1 student but does not have a Form I-20A-B, or (4) needs to be in the United States to take an examination or have an interview required for admission to a school as an F-1 student. [9 *FAM* 41.61, N9.1-4] State Department guidelines in the FAM do not provide for the issuance of a prospective-student visa to an M-1 student under any circumstances. The consular officer should write the words "prospective student" on the passport page that bears the B-2 visa. [*FAM*, vol. 9] This notation is conducive to favorable INS action on the alien's subsequent application to change from B-2 to F-1 status. Unfortunately, it is not uncommon for consular officers to neglect to mark the B-2 visas given to prospective students, and in the absence of that notation the alien can experience difficulty in securing a change to student status once inside the United States.

12.2.2.4 B-2 status (prospective exchange visitor)

A B-2 visa can be issued to a prospective exchange visitor who has been accepted for sponsorship by an institution or a sponsoring agency but who has not yet received a Certificate of Eligibility, Form IAP-66, either because the form has yet to reach the prospective exchange visitor or because there are no Forms IAP-66 available from the United States Information Agency.

12.2.2.5 B-1/B-2 status (visitor for business and pleasure)

An alien who plans to visit the United States for both business and pleasure may be granted a B-1/B-2 visa. At the port of entry to the United States an immigration officer will designate either B-1 or B-2 status or both on the Form I-94. An alien in B-1/B-2 status can receive reimbursement for travel and per diem.

12.2.2.6 Visa Waiver Program

An alien classifiable as a B-1 or B-2 visitor can be admitted without a visa, as long as certain criteria are met, under the terms of the Visa Waiver Program. Among the criteria are that the alien be classifiable as a B visitor, have a valid passport issued by a designated country, intend to visit the United States for a period not exceeding 90 days, and be in possession of a round-trip transportation ticket that is nonrefundable except in the country of issuance. [8 CFR 217.2] At the time of this writing, Andorra, Austria, Belgium, Brunei, Denmark, the Federal Republic of Germany, Finland, France, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Spain, Sweden, Switzerland, and the United Kingdom were the only countries in the Visa Waiver Program. [8 CFR 217.5]

An alien admitted under the Visa Waiver Program is not eligible for extension of stay or change to another nonimmigrant status. [8 CFR 217.3] However, such an alien is eligible to apply for adjustment of status to that of a permanent resident. (See Section 13.8)

12.2.3 C status (alien in transit)

An alien in C status is defined as an alien "in immediate and continuous transit through the United States" (C-1), or an alien who is entitled to pass in transit to and from the United Nations headquarters district and foreign countries under certain provisions of the U.N. headquarters agreement (C-2). An accredited official of a foreign government in transit through the United States is given C-3 status. [Act 101(a)(15)(C); 22 CFR 41.71(a), 22 CFR 41.71(b), and 41.23]

Some aliens in transit can be admitted to the United States without visas under provisions that appear in 8 CFR 214.2(c)(1)

Aliens in C status can be admitted to the United States for periods no longer than 29 days. [8 CFR 214.2(c)(3)] They cannot obtain extensions of stay or changes to another nonimmigrant status.

An alien in C-1 transit status cannot obtain permission to work. A foreign government official in C-2 or C-3 status may be employed only by the foreign government entity. [8 CFR 274a.12(b)(3)]

12.2.4 D status (crewman)

D status is accorded "an alien crewman serving ... in any capacity required for normal operation and service on board a vessel ... or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman." [Act 101(a)(15)(D)] Aliens in D status cannot change to another nonimmigrant status or obtain extension of stay beyond the 29 days normally permitted them. [8 CFR 214.2(d) and 8 CFR 252]

An alien in D status may be employed only in a crewman capacity on the vessel or aircraft of arrival or on a vessel or aircraft of the same transportation company; he or she may not be employed in connection with domestic flights or movements of a vessel or aircraft.

12.2.5 E status (treaty trader, treaty investor, and dependents)

According to the Act, an E visa is given to an alien who is

> entitled to enter the United States under ... a treaty of commerce and navigation between the United States and the foreign state of which he [or she] is a national, and the spouse and children of any such alien if accompanying or following to join him [or her]: (i) solely to carry on substantial trade ... or (ii) solely to develop and direct the operations of an enterprise in which he [or she] has invested, or ... is actively in the process of investing, a substantial amount of capital. [Act 101(a)(15)(E); also see 22 CFR 41.51]

Aliens with E visas can be admitted to the United States for an initial period not exceeding 1 year. They may be granted extension of temporary stay in increments of not more than 2 years by filing Form I-129. [8 CFR 214.2(e)]

An alien in E-1 or E-2 status "may be employed only by the treaty-qualifying company through which the alien attained the status. Employment authorization does not extend to the dependents of the principal treaty trader or treaty investor" except for an E-1 alien spouse or unmarried dependent son or daughter of an alien employee of the Coordination Council for North American Affairs. [8 CFR 274a.12(b)(5) and (c)(2)]

12.2.6 G status (representative to or employee of international organization and related personnel)

There are five types of G visa. G-1 status is accorded "a designated principal resident representative of a foreign government ... which ... is a member of an international organization ..., accredited resident members of the staff of such representatives, and members of his [or her] or their immediate family." [Act 101(a)(15)(G)(i)]

"Other accredited representatives of ... a foreign government to ... international organizations, and members of their immediate families" qualify for G-2 visas. [Act 101(a)(15)(G)(ii)]

G-3 status is accorded "an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he or she is an accredited representative is not a member of such international organization, and the members of his or her immediate family." [Act 101(a)(15)(G)(iii)]

"Officers, or employees of such international organizations, and the members of their immediate families" are classified as G-4 aliens. [Act 101(a)(15)(G)(iv)]

G-5 visas are given to "attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees." [Act 101(a)(15)(G)(v)]

An alien in G-5 status is admitted to the United States for an initial period of not more than 3 years and can apply for extensions in increments not to exceed 2 years. Others in G status are admitted for the duration of their status as recognized affiliates of an international organization. [8 CFR 214.2(g)(1)]

Aliens in G status may attend school full or part time while maintaining G status as their principal purpose for being in the United States.

Aliens in G-1, G-2, G-3, or G-4 status or their dependents may be employed only by the foreign government entity or the international organization. [8 CFR 274a.12(b)(7)] Dependents in G-1, G-3, or G-4 status can apply for permission to work under procedures set forth on Form I-566 and Form I-765. Aliens in G-5 status may be employed only by the official of or representative to the international organization. [8 CFR 274a.12(b)(8)]

12.2.7 I status (representative of foreign information media and immediate family)

An I visa is available, "on the basis of reciprocity," to "an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation" and to the spouse and children of such an alien. [Act 101(a)(15)(I)] Aliens in I status may be admitted for duration of status. They may not change employers without first receiving authorization from INS to do so. [8 CFR 214.2(i)] They can attend school full or part time while maintaining I status as their principal purpose of being in the United States.

An alien in I status may be employed only by the sponsoring foreign news agency or bureau. Employment authorization does not extend to the dependents of an information media representative. [8 CFR 274a.12(b)(10)]

12.2.8 K status (fiancé or fiancée of U.S. citizen)

A K visa can be given to "an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within 90 days after entry, and the minor children of such fiancée or fiancé." [Act 101(a)(15)(K)] To receive a K visa, the alien must be the beneficiary of an approved petition filed by a U.S. citizen on Form I-129F. It is submitted to the INS regional service center having jurisdiction over the petitioner's place of residence. Approval of the petition is valid for 4 months. Upon entering the United States, the K-1 alien has 90 days in which to marry the U.S. citizen petitioner. The alien after marriage must apply for adjustment of status to that of a permanent resident. [8 CFR 214.2(k)] An alien in K status cannot receive an extension of stay or change to another nonimmigrant classification.

An alien in K status is authorized to be employed by any employer in any capacity as evidenced by an INS employment authorization document. [8 CFR 274a.12 (a)(6)] However, the alien must apply to INS on Form I-765 for a document evidencing employment authorization.

12.2.9 L status (intracompany transferee and immediate family)

The Act defines an L alien as an alien (and his or her spouse and minor children) who, within 3 years preceding the time of his/her application for admission into the United States, has been employed continuously for 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his [or her] services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. [Act 101(a)(15)(L)]

L visas are granted on the basis of approved petitions filed with INS on Form I-129 by an employer. These procedures, along with the regulations concerning the admission, extension of stay, and employment authorization for aliens in L status, are found in 8 CFR

214.2(l). Dependents of L-1 aliens hold L-2 status and are permitted to attend school full or part time while maintaining their L-2 status.

An alien in L status may be admitted to the United States for the period of established need for the alien's services, not to exceed 3 years initially. Extensions of stay may be authorized in increments of up to 2 years, not to exceed a total maximum stay of 7 years. However, for specialized-knowledge L-1 aliens, the total maximum stay cannot exceed 5 years.

A 1-year residence-abroad requirement exists for L aliens who have spent 5 years in the United States in a specialized knowledge capacity or 7 years in a managerial or executive capacity in the United States. In order to qualify for a new L-1 visa (or an H-1 visa), the alien must have resided "and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the 1 year abroad, but do not count towards fulfillment of that requirement." [8 CFR 214.(l)(12)]

An L-1 intracompany transferee may be employed only by the U.S. entity for which the status was obtained. [8 CFR 274a.12(b)(12)] A dependent in L-2 status may not be employed.

12.2.10 N Status (parent or child of certain aliens given special immigrant status)

N status was created by the Immigration Reform and Control Act of 1986. It is given to the family members of aliens who are converted from G status to special immigrants by the IRCA. [Act 101(a)(15)(N)] N aliens are authorized to work as evidenced by an INS employment authorization document. [8 CFR 274a. 12(a)(7) and 8 CFR 214.2(n)] However, the alien must apply to INS on Form I-765 for a document evidencing employment authorization.

12.2.11 S Status (federal witnesses)

Congress created a new nonimmigrant visa classification in 1994. [Act 101(a)(15)(S)] The S visa classification provides for the admission of two classes of aliens. The first, S-1, covers aliens who possess certain reliable information critical to a federal or state government investigation or prosecution of an individual in a criminal organization or enterprise. The Attorney General determines who qualifies for the S-1 visa, of which no more than 100 may be given annually.

The second class, S-2, involves aliens (1) who possess critical information sought by certain federal authorities, (2) who might be placed in danger for supplying such information, and (3) who are eligible for the "terrorism information" award. The secretary of state and the Attorney General jointly determine which aliens qualify for the S-2. No more than 25 S-2 visas may be granted in any year. The Act provides for accompanying spouse and children within the discretion of the Attorney General (for the S-1) or of the Attorney General and secretary of state (for the S-2).

Anticipating that aliens otherwise qualifying for S visa issuance may be ineligible under one of the Act's grounds of ineligibility [Act 212(a)], Congress added waiver provisions specifically for the S visa classification. [Act 212(d)(1)]

Aliens admitted in S-1 or S-2 status are prohibited from adjusting to another nonimmigrant visa classification.

12.2.12 TD and TN Status under NAFTA

The TN classification is for Canadian or Mexican citizens who seek temporary admission to engage in business at a professional level under the North American Free Trade Agreement (NAFTA). [Act 214(e); 8 CFR 214.6] TD is for the dependent of a TN alien. Professional level business activity means an undertaking that requires at least a baccalaureate degree, or appropriate credentials showing status as a professional.

A separate procedure is provided for each nationality. Application by a Canadian for admission is made at an airport handling international traffic, at a U.S. preclearance/preflight station, or at a Class A U.S. port of entry. No prior petition, labor certification, visa, or prior approval is required. TN is not available for self-employment.

The Canadian alien must present proof of Canadian citizenship; a letter from the prospective employer in the United States or the foreign employer describing the business activity to be engaged in, anticipated length of stay, and salary; copy of professional degree; and license if required, as well as the required fee. The business activity must be in one of the professions specified in the regulations. Most professions are listed.

In the case of a citizen of Mexico the employer must file Form I-129 with the required supporting documentation. [8 CFR 214.6] These include a certification from the Labor Department on Form ETA 9035, educational credentials, license (if required), description of duties and proof of Mexican citizenship. At the port of entry a visa and passport must be presented. No fee is required at the port of entry.

A TN Canadian is admitted with Form I-94 for a period of 1 year. The alien may be readmitted for the unexpired period authorized on Form I-94 and may apply for extension of stay in 1-year increments on Form I-129.

A TN Mexican is admitted for the period of the approved petition upon presentation of the TN visa and the employer's statement giving the alien's profession and describing the duties to be performed. The statement must also set forth the licensing requirements or state that a license is not required. Extension of stay is requested by filing Form I-129.

Not more than 5,500 citizens of Mexico can be classified as TN annually for the first year. The limit may be raised thereafter.

Accompanying or following-to-join spouses and children are admitted in TD status without fee. They may not accept employment, but may attend school full or part time.

12.3 EXTENSION OF STAY IN NONIMMIGRANT STATUS

12.3.1 General

Most nonimmigrants (except those in A-1, A-2, F-1, F-2, G-1, G-2, G-3, G-4, I, J-1, and J-2 status) are admitted to the United States for a specific period of time. However, F and J aliens admitted for duration of status may have to seek a program extension if the F-1 student or J-1 exchange visitor is unable to complete the course of study or the exchange program within the time specified on Form I-20 or IAP-66. Any other nonimmigrants who need to remain for a longer period in order to accomplish the purpose of their stay also need to apply for an extension of stay. A person in C (transit), D (crewman), or K (fiancé or fiancée) status is not eligible for extension of stay; neither are people admitted to the United States under the terms of the Visa Waiver Program. An eligible nonimmigrant can apply for an extension before the expiration date shown on the Form I-94. INS suggests applying at least 45 days before that date.

12.3.2 Procedures for applying for extension of stay

Application for extension of stay in A-3, B, F-1, G-5, I, and N classification is made on Form I-539 (Application to Extend/Change Nonimmigrant Status). Spouses, and unmarried children under 21 who are in the same status may be included in the extension application. Form I-539 is filed with the appropriate INS service center.

To request an extension for an E, H, L, O, P, Q, R, or TN alien, the employer of the principal alien must file Form I-129 (Petition for Nonimmigrant Worker) with the INS service center having jurisdiction over the place of employment. The dependents of such employees may be included in Form I-129 if the petition is for only one worker. Otherwise dependents must file on Form I-539. TN (NAFTA professional) aliens apply to the INS Northern Service center.

The required fee must be submitted (see Appendix 1) with a copy of the employee's Form I-94 (both sides) and copies of the Forms I-94 (both sides) of any dependents plus a copy of any I-797 approval notice changing or extending status.

In certain cases additional documentation is required. For an A-3 or G-5 extension, attach to the application a copy of the employer's I-94 or approval notice, a letter from the employer describing the employee's duties and stating the intent to employ, and an original Form I-566 certified by the State Department.

For a B-1 or B-2 extension, attach a statement explaining in detail the reasons for the extension; why the extended stay would be temporary; arrangements made to depart; and the effect the extended stay would have on the nonimmigrant's foreign employment and residency.

For an I extension, attach a letter from the employer describing the employment and establishing that the employment is as a representative of a qualifying foreign media.

For an N extension, attach a copy of Form I-551 of the applicant's child or parent.

The extension application should be filed before the authorized stay expires. INS suggests filing at least 45 days prior to expiration. Late filing may be excused if due to extraordinary circumstances. In 1992 INS consolidated the extension-of-stay procedure with the procedure for change of nonimmigrant classification (see Section 12.6.4).

12.3.3 Satisfactory departure

Should a nonimmigrant need "an additional period of less than 30 days beyond the previously authorized stay within which to depart from the United States," such time may be granted without the filing of a formal application when the need for the brief extension is "because of conditions beyond an alien's control or other special circumstances." [8 CFR 214.1(c)(5)] Request for an extension of this kind can be made in person or by means of a letter stating the reasons for the delay in departure and giving the final departure date. The alien's Form I-94 (or I-797 approval notice) should accompany the letter. If the request is granted, INS will usually mark the Form I-94 with the words "satisfactory departure" and the date by which the departure is expected to take place.

12.4 REENTRY AFTER TEMPORARY DEPARTURE

An alien in any of the nonimmigrant classifications discussed in this section can depart from and reenter the United States with a valid passport and visa. An expired visa can be considered automatically extended (and converted to a different classification if the alien has changed status in the United States) until the date of reentry (thus a visa with a current date is unnecessary) in the case of a nonimmigrant who (1) has maintained nonimmigrant status while in the United States and has a Form I-94 with an expiration date that is in the future; (2) is seeking to reenter the United States after an absence not exceeding 30 days in Canada or Mexico (or, in the case of F or J nonimmigrants, Canada, Mexico, and the adjacent Caribbean islands except Cuba); (3) plans to resume the same nonimmigrant status (or begin a new one) in the United States within the authorized period of initial admission or extension of stay; (4) has a valid passport; and (5) does not need authorization of admission under section 212(d)(3) of the Act. [22 CFR 41.112(d)]

12.5 POSSIBILITY FOR STUDY UNDER NON-IMMIGRANT CLASSIFICATIONS OTHER THAN STUDENT OR EXCHANGE VISITOR

Aliens in many nonimmigrant classifications can attend school, full or part time, without violating the terms of their status in the United States, assuming they maintain their status otherwise. Nothing prohibits aliens in A, B, E, F-2, G, H, I, J-2, K, L, M-2, N, O, P, Q, or R status from being students. It may be considered a violation if a nonimmigrant who was admitted to the United States for another purpose (e.g., someone in A-1, H-1, I, or L-1 status) undertook studies as his or her principal activity. However, part-time studies (and occasionally short-term, full-time studies) are not inconsistent with these classifications, and full-time studies are not inconsistent with the status of the dependents of people in these classifications. For dependents, see 8 CFR 248.3[e][2].

School officials have no formal immigration-related responsibilities concerning student aliens in these non-student classifications.

12.6 CHANGE OF NONIMMIGRANT CLASSIFICATION

12.6.1 General

This section covers procedures and requirements for changing from one nonimmigrant classification to another. It does not cover adjustment of status from that of a nonimmigrant to that of an immigrant (or permanent resident). The latter is discussed in Section 13.

A nonimmigrant in the United States may, subject to limitations specified below, change from one nonimmigrant status to another if he or she has maintained the previous status and is eligible for the new one. [Act 248] Aliens in C, D, K, and TWOV status are not eligible for any change of status. Those in J status who are subject to the 2-year home-country residence requirement can change only to A or G status. J-1 aliens who came for graduate medical education or training cannot change their nonimmigrant status unless they receive a waiver of the 2-year home residency requirement based on fear of persecution or interest by a U.S. government agency. Aliens admitted under the Visa Waiver Program cannot change their nonimmigrant status. In addition, M-1s cannot change to F-1 from within the United States except under certain circumstances. [8 CFR 248.1(c)]

An applicant for a change of nonimmigrant status must be able to explain satisfactorily why he or she did not originally enter the United States in the status being applied for. For example, a B-2 visitor applying to change to H-1B would need to explain why he or she did not apply for H-1 status before entering the United States and show that he or she came as a bona fide tourist without any prior intention of being employed.

12.6.2 Procedure for applying for change of nonimmigrant status

Form I-129 is used by an employer to petition for visa issuance and entry of an alien in H, L, O, P, or Q classification and for extension in or change to such classification. It is also used by an employer to petition for extension of stay or change of status for an alien as an E, R-1, or TN nonimmigrant. A petition is not required to apply for an E or R-1 nonimmigrant visa or for admission as a TN nonimmigrant, except that a petition is required for a Mexican TN. However, a petition on Form I-129 is required to apply for change to such status or an extension of stay in such status.

Dependents of E, H, L, O, P, Q, R, and TN employees may be included in the petition for the principal to extend stay or to change to such classification.

Aliens in the United States seeking change to nonimmigrant status as A, B, F, G, I, J, M, or N apply on Form I-539 and may include their dependents in the form.

The required fee must be submitted (see Appendix 1) with a copy of Form I-94 for the applicant and each dependent included in the application, as well as copies of any Form I-797 approval notices.

In certain cases additional documentation is required to apply for change in nonimmigrant status.

For change to A-3 or G-5, attach a copy of the employer's Form I-94, a letter from the employer describing the applicant's duties and intent to employ the applicant personally, and Form I-566, certified by the State Department to show the employer's continuing accredited diplomatic status. For change to other A or G status, attach State Department-certified Form I-566 to show accredited diplomatic status.

For change to B, attach a statement explaining in detail the reasons for the request, why extension would be temporary, and describing arrangements made to depart and the effect the extended stay would have on the applicant's foreign employment and residency.

For change to F-1 or M-1, attach original Form I-20.

For change to I, attach a letter from the employer describing the employment and establishing that the employment is as a representative of qualifying foreign media.

For change to J-1, attach an original IAP-66.

For change to N, attach a copy of Form I-551 of the applicant's child or parent.

The application for change must be filed before the authorized stay expires. Late filing may be excused if due to extraordinary circumstance.

The application must be filed with the appropriate INS service center.

12.6.3 Changes of classification with no application or fee

The policy under which neither a formal application nor a fee was required to apply for certain changes of classification was discontinued effective 10 February 1994 pursuant to amendments of 8 CFR 248.3 published in the *Federal Register* on 11 January 1994.

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12.6.4 Applicant's status while application for change of status is pending

An applicant for change of nonimmigrant status may have to wait many months to learn the outcome of the application. Under these circumstances, aliens often feel compelled to act on the assumption that the application has been approved and to undertake activities appropriate for the new status before INS adjudicates the application. In practice, INS does not normally take any action against a nonimmigrant who has submitted a timely application for change of nonimmigrant status and whose application has not been acted upon by the time the original status expires. The alien may remain in the United States until the application is adjudicated. However, an applicant for change of status to a classification that permits employment may not begin that employment until the change of status is approved. [8 CFR 274a.12 and letter from James A. Puleo, acting associate commissioner of INS, to David Ware, published in *Interpreter Releases*, 21 December 1987, p. 1410]

12.7 CONTROL OF EMPLOYMENT OF ALIENS

The Immigration Reform and Control Act of 1986 requires employers to verify the identity and eligibility for employment of all individuals hired on or after 6 November 1986. For further information about the employer-sanctions provisions of the IRCA, see Section 14.

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SECTION 13

Immigrant Status

Lorig S. Boyajian

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TAG 656	*Technical Assistance Guide 656*, "Labor Certification"
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status
I-752	Application for Waiver of Requirement to File Joint Petition for Removal of Conditions
N-400	Application to File Petition for Naturalization

13.1 DEFINITION

An immigrant is an alien who has been lawfully admitted to the United States for permanent residence. In common usage the word "immigrant" is interchangeable with "permanent resident." Court decisions in recent years have established that immigrants have virtually the same legal rights and civil liberties that are held by U.S. citizens, the major exceptions being the right to vote, to hold some public offices, and to be employed by federal agencies in civil service positions. For example, immigrants are eligible for federally subsidized educational-aid programs. An immigrant has the right to remain in the United States for an indefinite length of time without any need to apply for extensions of stay, work permits, or similar benefits that must be specifically requested by nonimmigrants.

Under the immigration law, immigrants are allowed to accept any kind of employment. No employer may discriminate in the hiring process against immigrants on the basis of national origin. Generally no employer may discriminate in the hiring process against immigrants on the basis of an immigrant's citizenship status unless citizenship status is required in order to comply with a state, local, or federal law. [Act 274B] However, those immigrants who do not apply for citizenship within the 6 months of the date they become eligible will no longer be protected under this prohibition.

Although immigrants are normally entitled to remain in the United States permanently, this privilege can be revoked and they can be deported under certain circumstances, even after naturalization. Grounds for deportation of an immigrant include fraudulent entry to the United States, commission or conviction of certain crimes involving moral turpitude (including the possession of illegal substances), and determination that the alien was not eligible for immigrant status at the time it was acquired. Thus, even though immigrants are much more secure in their right to remain in the United States than are nonimmigrants, they are not completely safe from deportation.

Immigrants are never compelled to become U.S. citizens and may remain in immigrant status for an indefinite length of time. They become eligible to apply for citizenship through naturalization, if they choose, after they have resided in the United States as permanent residents for 5 years, or for 3 years if they have been married to a U.S. citizen for 3 years. There are also reduced waiting periods in other circumstances such as service in the U.S. military or employment abroad with the U.S. government. Their right to retain their prior citizenship as well as their newly acquired U.S. citizenship depends largely on the laws of their former country. Although U.S. law does not recognize the right of naturalized citizens to retain another citizenship, the U.S. government will not move to revoke U.S. citizenship unless the individual commits an act deemed inherently expatriating (such as service with military forces hostile to the United States) or accompanied by a specific intent to expatriate.

13.2 THE IMMIGRATION AND NATIONALITY ACT AS AMENDED

The selection and screening of immigrants to the United States is governed by the Immigration and Nationality Act of 1952, as amended. Major amendments were passed by Congress in 1965 (PL 89-236), 1976 (PL 94-571), 1980 (PL 96-212), 1986 (PL 99-603) and 1990 (PL 101-649). The 1965 amendment established a comprehensive new preference system for the Eastern Hemisphere, eliminated a number of discriminatory provisions against the natives of certain countries, and imposed for the first time a numerical limitation on immigrants from the Western Hemisphere. The 1976 amendment applied the preference system to the Western Hemisphere. The Refugee Act of 1980 (PL 96-212) repealed the seventh preference classification and established a worldwide ceiling of 270,000 preference immigrant visas per year. The Immigration Reform and Control Act of 1986 (PL 99-603) introduced a number of changes, including the marriage-fraud amendments, a legalization program for certain classes of illegal aliens, and an employer-sanctions program requiring that all employers verify the work eligibility of every worker hired and prohibiting the hiring of aliens unauthorized to work. The Immigration Act of 1990 (PL 101-649) and subsequent Miscellaneous and Technical Amendments of 1991 (PL 102-232), universally recognized as the most sweeping and far-reaching reform of this country's legal immigration system in 38 years, include a complete revision of both the family sponsored and employment-based immigration provisions. This section of the *Manual* is based on the Act as changed by these amendments.

13.3 OBTAINING AN IMMIGRANT VISA ABROAD OR APPLYING FOR IMMIGRANT STATUS IN THE UNITED STATES

The Act provides for two distinct avenues for becoming an immigrant, or permanent resident, of the United States. One avenue is to apply for an immigrant visa at a U.S. consular post abroad and to enter the United States as an immigrant. The other avenue, and the one most often used for nonimmigrants in the United States, is to apply for adjustment of status—a change from nonimmigrant to immigrant status—while in the United States. The latter approach has many variations, but most involve application for adjustment of status to that of permanent resident under section 245 of the Act. Regardless of the avenue followed—application for an immigrant visa abroad or adjustment of status in the United States—the ultimate result is immigrant, or permanent-resident, status for the applicant (see Sections 13.6 and 13.7).

13.4 The Selection System

The selection of persons eligible to become immigrants involves qualitative standards and numerical limitations, both of which are governed by complex systems of allocating immigrant visa numbers by country or dependent area and by a series of preference classifications. These systems are designed to regulate how many and what kinds of people may become immigrants.

13.4.1 Qualitative standards

The intent of establishing qualitative standards is to determine what kinds of applicants may become immigrants. Three kinds of persons constitute the major portion of those who qualify for immigrant status, although the Immigration Act of 1990 established a diversity program that will allow additional immigrants into the United States each year based on their national origin.

13.4.1.1 Applicants who have a family relationship to a U.S. citizen or permanent resident

A basic objective of the law is to provide for the uniting of families. Since a U.S. citizen or permanent resident has a right to reside in the United States, certain members of his or her family are given preference as immigrant applicants in order to permit the family to be together. Applicants who have family members who are U.S. citizens or permanent residents may fall into the classifications known as immediate relatives and family-based first, second, third, and fourth preferences (see Sections 13.4.2.1.1 and 13.4.3.1).

13.4.1.2 Applicants whose services are required by an employer in the United States

A second objective of the law is to attract to the United States individuals whose occupational skills are in short supply here. They are assigned employment-based preference classifications, some of which require labor certification (see Section 13.5), a process that among other things affirms that their occupational skills are, indeed, in short supply in the United States.

13.4.1.3 Refugees

The Refugee Act of 1980 defines a refugee as any person "who is unable or unwilling to return [to his or her country of nationality] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." [Act 101(a)42] For further information on the admission of aliens to the United States as refugees and their adjustment to permanent-resident status, see Section 14.6.

13.4.1.4 Aliens in unlawful status

Aliens in legal or illegal status who have continuously resided in the United States since before 1 January 1972 are eligible to apply for permanent resident status under the registry provisions of the Act.

13.4.2 Numerical limitations

Numerical limitations are designed to control the number of people who may become immigrants each year and to place limits, within the total, on the number from each independent country and dependent area. This system of numerical limitations is different from the quota system that was in effect until 1965.

13.4.2.1 Applicants who are not subject to numerical limitations

Not all would-be immigrants are subject to numerical limitations. Those who are not subject to these limitations are eligible for immigrant status immediately upon establishing their qualifications. They do not have to obtain an immigrant visa number under the preference system, and they are subject only to the qualitative standards established by the law. Applicants who are not subject to numerical limitations are described below.

13.4.2.1.1 Immediate relatives of U.S. citizens. An immediate relative is defined as (1) the spouse of a U.S. citizen; or (2) the unmarried minor child (under 21 years of age) of a U.S. citizen; or (3) the parent of a U.S. citizen, provided, in the case of a parent, that the U.S. citizen is at least 21 years of age (also see Section 13.7.4). [Act 201(b)]

13.4.2.1.2 Special immigrants. Special immigrants include, among others, certain returning U.S. residents, former citizens, certain foreign medical graduates, longtime U.S. government employees abroad, and certain longtime residents of the United States. [Act 101(a)(27)]

13.4.2.2 Applicants who are subject to numerical limitations

All applicants for immigrant visas other than those described in the immediately preceding sections are subject to annual numerical controls, the fiscal year being 1 October to 30 September. As a result, an immigrant visa is not always immediately available to an alien who has qualified to apply for immigrant status (see Section 13.8.2).

The Immigration Act of 1990 increased the numerical limitation placed upon the selection system for worldwide immigration from 270,000 to 675,000 per year [Act 201(c) and (d) and (e)], the bulk of the increase being allocated to employment-based immigrant visas. Subject to certain exceptions, the total number of immigrant visas made available to natives of any single country will be 7 percent (or 2 percent for a dependent area except Hong Kong) of the total number of such visas available each year. [Act 202] Usually, a person is considered a native of the country of his or her birth (as opposed to country of citizenship or residence) and is said to be "chargeable" to that country's allocation of immigrant visas. However, under rules of "alternate chargeability," certain applicants may be able to qualify under the numerical limitation of the country of birth of their spouse or either parent. [Act 202(b); 22 CFR 42.12]

13.4.3 The preference system

Generally, to qualify for an immigrant visa, an individual must be eligible through one of the several available "preferences" outlined below. The preference system is designed to regulate what kinds of people may become permanent residents. All applicants for immigrant visas who are subject to the preference system are subject to numerical limitations (see Section 13.8.2).

An alien may qualify for more than one preference classification and may use the classification offering earliest availability of an immigrant visa. For example, the spouse of a permanent resident (second preference) may also be the sibling of a U.S. citizen (fourth preference) and/or the married son or daughter of a U.S. citizen (third preference). Any or all of the relatives may file petitions on behalf of the alien, and the alien may use the preference in which visa numbers become available first. Similarly, the beneficiary of a relative petition may be simultaneously the beneficiary of an employment-based preference petition based on profession or occupation.

If an independent country or dependent area uses all of its maximum number of immigrant visa numbers in any fiscal year, in the following fiscal year the percentages allocated to each of the preference classifications will be applied to the country limitation as well as to the worldwide limitation. [Act 202(e)] This provision was added by the amendment of 1976 and is designed to assure that at least some visa numbers will be available in each preference classification for each country if that country used its entire allocation of visas in the previous year (see Section 13.8.2).

13.4.3.1 Preference classification based on family-sponsored immigration

Section 203(a) of the Act specifies the following preference classifications under family-sponsored immigration. A labor certification is not required for family-based immigrant visas.

13.4.3.1.1 First family-based preference. Up to 23,400, plus any unused visas from the other family-based preferences of the annual numerical limitation, are assigned to "qualified immigrants who are the unmarried sons or daughters of citizens of the United States." [Act 203(a)(1)] Unmarried minor children of U.S. citizens are considered as immediate relatives and are not subject to numerical limitations. Therefore, this preference classification applies to unmarried sons or daughters who are 21 years of age or over.

13.4.3.1.2 Second family-based preference. Each year 114,200, plus any visa numbers not used in the first preference classification, are assigned to "qualified immigrants who are the spouses, unmarried sons, or unmarried daughters" of a permanent resident. [Act 203(a)(2)] The Act of 1990 divided this preference classification in two groups. Second Preference A is for spouses and children under the age of 21 of a permanent resident; Second Preference B is for unmarried sons and daughters age 21 or over of a permanent resident. Second Preference A applicants will have preference in the total amount of visas allocated inasmuch as at least 77 percent of the 114,200 visa numbers must be allocated to this subcategory. Thus, ultimately, it will take longer for adult, single children of permanent residents to obtain permanent resident status than it will take a spouse or minor child. As of January 1994, 1 million registrants were waiting for permanent resident status under the second Preference A and approximately 450,000 were waiting for permanent resident status through second Preference B.

13.4.3.1.3 Third family-based preference. Up to 23,400 of the annual numerical limitation, plus any unused visas from the first two preferences, are assigned to married sons and daughters of United States citizens.

13.4.3.1.4 Fourth family-based preference. Up to 65,000 of the annual numerical limitation, plus any visa numbers not used in the first three preference classifications, are assigned to brothers and sisters of U.S. citizens. The citizen must be at least 21 years old to petition on behalf of a brother or sister. Approximately 1.5 million individuals are waiting in line for a visa based on this preference. An individual who has a petition filed on his behalf today may have to wait for as long as 20 years to obtain permanent resident status under this preference.

13.4.3.1.5 Family-based immigrant visa petitions approved prior to 1 October 1991. Under the law as it existed prior to 1 October 1991, petitions filed by U.S. citizens on behalf of married sons or daughters were approved under the fourth preference classification. Petitions filed on behalf of brothers and sisters were approved under the fifth preference classification. In the event that an individual has not received permanent-resident status prior to 1 October 1991 his or her petition will be automatically converted to the new third or fourth preference classification; at the time of the eventual interview for permanent residence, he or she will be given the appropriate preference status according to the new law.

13.4.3.2 Preference classification based on employment-sponsored immigration

Section 203(b) of the Act as amended in 1990 dropped the previous third and sixth preference employment-based classifications, created five new classifications, and increased the employment-based annual numerical limitation on employment-based immigrants from 54,000 to at least 140,000 per year. A labor certification is generally required; however, there are now many more exceptions to this general rule; these are discussed below.

13.4.3.2.1 First employment-based preference (priority workers). Up to 40,000 visas are assigned to aliens of extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers. A labor certification is not required for an alien classified under the first employment-based preference. Form I-140 with supporting documentation must be submitted to the regional service center covering the area of intended employment. Each priority-worker category is detailed below.

Aliens with extraordinary ability. This classification is reserved for aliens who have sustained national or international acclaim in the sciences, arts, education, business, or athletics. [Act 203(b)(i)(A)] The individual's accomplishments must have been recognized in his or her field by extensive documentation. The legislative history of this classification indicates that Congress intended a very high standard for aliens in the category and that it is for "one of that small percentage who have risen to the very top of the field of endeavor." [8 CFR 204.5(h)(2)]. The individual does not require an offer of employment, but evidence must be submitted to INS to show that he or she is coming to continue work in the area of exceptional ability and that entry into the United States will substantially benefit the United States. [8 CFR 204.5 (h)(5)]

A petition for an alien of extraordinary ability must be accompanied by evidence to prove national or international acclaim and that his or her achievements have been recognized. Evidence of a major, internationally recognized award, such as an Academy Award or a Nobel Prize, is sufficient to prove extraordinary ability. In the absence of such an award, evidence of at least three of the following is also acceptable: (1) the receipt of lesser internationally or nationally recognized prizes or awards of excellence in the field; (2) membership in associations in the field that require outstanding achievements of their members; (3) published material in professional or major trade publications or media about the individual, relating to his or her work in the field; (4) participation on a panel, or individually, as a judge of the work of others in the field; (5) original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field; (6) authorship of scholarly articles in professional journals or other major media; (7) evidence of the display of work in the field at artistic exhibitions or showcases; (8) evidence that the individual has commanded a high salary or other significantly high remuneration for services in relation to others in the field; (9) evidence that the individual has performed in a leading or critical role for organizations that have a distinguished reputation; or (10) evidence of commercial success in the performing arts. If the above standards do not readily apply to the individual's occupation, comparable evidence is required.

Outstanding professors and researchers. This classification of individuals within the priority worker category is assigned to professors and researchers who are recognized internationally as being outstanding in a specific academic area, have at least 3 years of teaching and/or research experience in the academic area (such experience may include research or teaching while working toward an advanced degree only if the research is recognized within the academic field as outstanding or if the teaching duties entailed full responsibility for the class taught), and will be employed in a tenured or tenure-track teaching position or a permanent research position with a university or institution of higher learning. An individual may also apply under this category if he or she will be employed in a comparable research position with a private or nonprofit organization so long as such organization employs at least three full-time individuals in research and it has achieved documented accomplishments in an academic field. [8 CFR 204.5(i); Act 203(b)(1)(B)]

An I-140 petition filed under this category must include documentation evidencing at least 3 years of research or teaching experience in the form of letters detailing previous employment experience from prior employers, including exact dates of employment and a detailed job description of the duties performed as well as evidence that the individual is recognized as internationally outstanding in the specific academic area by providing documentation of at least two of the following: (1) receipt of major prizes or awards for outstanding achievement; (2) membership in associations in the academic field that require outstanding achievements of their members; (3) published material in professional publications written by others about the individual's work in the field; (4) participation on a panel, or, individually, as the judge of the work of others in the field; (5) authorship of scholarly books or articles in the field in scholarly journals with international circulation; or (6) evidence of original scientific or scholarly research contributions to the academic field.

Applying for an immigrant visa through this classification is highly advisable for university professors and researchers. It allows the university to avoid the labor certification process and dramatically reduces the processing time in obtaining permanent residence status for an individual from 1 to 3 years to less than 1 year in most jurisdictions. Documentation should be detailed in the form of copies of all publications and abstracts. Statements from authorities in the academic field who possess the expertise to render an opinion on the original contributions made by the alien must be attached as well. Confirmation of membership in professional associations with a statement articulating the requirements for membership is also important.

Multinational executives and managers who have been employed outside of the United States for at least 1 year within the 3 years immediately preceding entry into the United States and are or will be employed in an executive or managerial capacity for that same employer or its subsidiary, branch, or affiliate in the United States are also eligible to apply for priority worker status. [8 CFR 204.5(j)]

13.4.3.2.2 Second employment-based preference (members of the professions holding advanced degrees or aliens of exceptional ability). Up to 40,000 visas, plus any unused visa numbers from the first employment-based preference, are assigned to this classification of immigrants. A labor certification is ordinarily required, unless it can be established that a waiver of the labor certification would be in the national interest (see below).

To be classified as a member of the professions holding an advanced degree, the position must be professional and the individual must hold at least a master's degree or its equivalent. The equivalent of a master's degree is deemed to be a bachelor's degree or foreign equivalent followed by at least 5 years of progressive experience in the specialty. "If a doctoral degree is customarily required by the specialty, the alien must have a United State doctorate or a foreign equivalent degree." [8 CFR 204.5(k)(2)] Clearly, the application must show that an advanced degree is required for the job opportunity.

To be classified as an individual of exceptional ability in the sciences, arts, or business, one must possess a degree of expertise significantly above that ordinarily encountered and it must be evidenced by at least three of the following: (1) academic records in the area of exceptional ability; (2) letters from current or former employers showing that the person has at least 10 years of full time experience in the occupation; (3) a license to practice the profession or certification for the occupation; (4) evidence that the person has commanded a high salary; (5) membership in professional associations; or (6) recognition for achievements and significant contributions to the industry or field by peers or organizations.

INS may waive the job offer and labor-certification requirement for an individual in this preference category if the exemption would be in the national interest. [8 CFR 204.5(k)(4)] National interest is not defined, and the obligation to demonstrate that a waiver would be in the prospective national benefit rests with the applicant.

The Administrative Appeals Unit of the INS has articulated 7 criteria considered relevant in determining national interest. They are 1) improving the U.S. economy; 2) improving wages and working conditions of U.S. workers; 3) improving education and training programs for U.S. children and underqualified workers; 4) improving health care; 5) providing more affordable housing for young and/or older, poorer U.S. residents; 6) improving the environment of the United States and making more productive use of natural resources; or 7) a request from an interested U.S. government agency.

Documentation to establish national interest should include specific contributions that have been made by the applicant and expert opinions from authoritative sources on how these contributions have been and will be to the national benefit if they are continued by the applicant.

13.4.3.2.3 Third employment-based preference (skilled workers, professionals, and "other" [unskilled] workers). Up to 40,000 visas, plus any unused visas from the prior two classifications, are assigned to this classification of immigrants. Skilled workers are defined as individuals who are capable "of performing skilled labor requiring at least 2 years of training or experience." [8 CFR 204.5(l)(2)] Professionals are those who hold a bachelor's degree and who are members of the professions. Other workers are those who will be performing unskilled labor, that is, individuals who will fill an occupation that requires less than 2 years of training or experience. Only 10,000 of the more than 40,000 visas allocated to this preference are assigned to individuals falling into the "other worker" category. It is anticipated that those falling into the latter category will have to wait up to 6 or more years to obtain permanent residence. [8 CFR 204.5(l)]

13.4.3.2.4 Fourth employment-based preference (religious workers). 5,000 immigrant visas are reserved for special immigrant religious workers under the Act 101(a)(27)(C). To qualify, an alien must have been a member of the religious denomination for at least 2 years immediately preceding application, and this denomination must have a bona fide tax-exempt, nonprofit, religious organization in the United States. [8 CFR 204.5(m)] A religious worker must be seeking to enter the United States to be a minister of religion. As of October 1994 immigrant visas for those who work in other religious capacities are no longer available under this category.

13.4.3.2.5 Fifth employment-based preference (employment-creation immigration: investors). 10,000 visas are assigned annually to aliens who have invested in or are in the process of investing at least $1 million in a new commercial enterprise in the United States ($500,000 in a rural area) that will create full-time employment for at least 10 U.S. workers. [8 CFR 204.6]

13.4.3.2.6 Diversity Immigration Program (DV). The Act of 1990 makes available 55,000 immigrant visas per year to individuals who were born in certain countries determined to be "low admission" regions and who possess at least a high school education or at least 2 years of work experience in a skilled job. Each year the State Department will determine which countries are low admission countries and allocate the numbers of visas to be available for each region. To obtain permanent residence through this channel one must be generally admissible as an immigrant (for example, not subject to a 2-year foreign residence requirement, or not a criminal). The application procedure for registration in this program, as set by the Department of State, requires mailing a sheet of paper to a specified post-office box in New Hampshire during a specified window of time, usually 1 month each year. The following information must be typed on the sheet: the applicant's name, date and place of birth (as well as those of a spouse or any children) and mailing address. An applicant may mail one application only and applicants will be selected randomly. The first 75,000 selected and registered will be notified. When all 55,000 immigrant visas have been issued, the program for the year will end. In order to be considered in the next year's pool of applicants, an individual must apply again as outlined above. The same post-office box may not be used each year, nor may the application period be the same time.

13.4.3.2.7 Employment-based (third and sixth preference) visa petitions filed prior to 1 October 1991. All third preference I-140 petitions filed before 1 October 1991 were automatically converted to the second employment-based preference. All sixth preference I-140 petitions filed prior to 1 October 1991 were automatically converted to the third employment-based preference. Those sixth preference petitions for occupations requiring less than 2 years of education, training or experience were converted into the "other worker" category within the third employment-based preference. Entitlement to the automatic conversion expires 2 years after the date that the petition's priority date has been reached. [137 *Congressional Record* H6906, daily ed., 26 September 1991] After that time, the petition will lapse and it will be necessary to begin the immigrant visa process again from the beginning.

13.4.3.3 Dependents

Once eligibility for one of the preference classifications is established for the principal alien, his or her spouse and/or unmarried minor children who are accompanying or following to join are assigned the same preference or nonpreference classification. Separate immigrant visa petitions do not have to be filed for these dependents unless they are otherwise entitled to an immigrant status and the immediate issuance of a visa. [Act 203(a)(8); 8 CFR 204.1(a)] Like the principal alien, however, they are required to submit documents such as birth certificates and to undergo medical examinations to establish eligibility for derivative immigrant status. A spouse or stepchild acquired by the principal alien after he or she becomes a permanent resident do not qualify as "accompanying" or "following to join." These dependents need to have separate visa petitions filed on their behalf and will be subject to the usual numerical limitations. This may result in the separation of family members until visa numbers become available.

Further, no dependents are included in immediate relatives' cases. Thus, if a citizen marries a nonresident who has children under the age of 21, application must be made for the spouse and each child separately. Likewise, if a citizen makes application for his or her mother, who has children under the age of 21, the children will not be able to accompany her; she will have to file separate I-130 petitions on their behalf under the second family-based preference.

13.4.4 Ineligibility for immigrant status

In addition to specifying qualitative standards and numerical limitations for establishing eligibility for immigrant status, the Act also lists a number of specific grounds for ineligibility for such status.

13.4.4.1 Grounds for exclusion

Section 212(a)(1-9) of the Act lists several grounds for ineligibility for visas and admission including drug abuse and addiction, communicable disease of public significance, and certain physical or mental deficiencies. Those who are likely to become public charges or have a serious criminal record (including those who have been convicted of a violation of any law relating to illegal possession of or traffic in narcotic drugs or more than 1 ounce of marijuana) may also be excluded, as may aliens engaged in terrorist activity, members of a communist party (with many broad exceptions), persons who participated in persecution under the Nazi government of Germany, and smugglers of illegal aliens. Lastly, aliens who arrived in the United States in an improper or illegal manner or who were previously excluded or deported from the United States within the past 5 years (or within 20 years in the case of an alien convicted of an aggravated felony), as well as aliens who lack proper documentation and aliens who are ultimately ineligible for U.S. citizenship may also be excluded under the Act.

13.4.4.2 Foreign medical doctors

In the Health Professions Educational Assistance Act of 1976 (PL 94-484), Congress declared that there was no longer a shortage of medical doctors in the United States and expressed concern over the quality of health care provided by medical doctors who had obtained their training outside the United States. PL 94-484 added an employment-based ground for ineligibility for immigrant status by declaring ineligible an alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the secretary of education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as members of the medical profession unless the alien (i) has passed Parts I and II of the National Board of Medical Examiners [NBME] examination (or an equivalent examination as determined by the secretary of Health and Human Services) and (ii) is competent in oral and written English. [Act 212(a)(5)(B)]

Until July 1992, the secretary of Health and Human Services had determined that the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) is the equivalent for visa purposes of Parts I and II of the NBME examination. Therefore, with the exception of those medical doctors specified in Section 13.4.4.2.3, all medical doctors applying for immigrant status on the basis of their profession needed to pass the NBMEE (Parts I and II) or the FMGEMS. On 17 July 1992, the HHS announced that Steps 1 and 2 of the United States Medical Licensing Examination (USMLE) were the equivalent to and would replace the FMGEMS, which were discontinued.

The secretary of education has approved the Liaison Committee on Medical Education as the appropriate body to accredit medical schools. Only schools in the United States and Canada may meet the accreditation requirements.

13.4.4.2.1 ECFMG certification. Foreign medical doctors who wish to enter the United States either permanently or temporarily for medical practice (including graduate medical training on J-1 visas) must not only pass the licensure examination but also obtain certification by the ECFMG as a prerequisite for licensing in most states. Further information on these examinations and requirements can be obtained from the commission in Philadelphia.

13.4.4.2.2 Exemption from the NBME, Parts I and II, FMGEMS, or USMLE. Foreign medical doctors applying for immigrant status are not required to pass the NBME examination or the FMGEMS if they fall into one of the following categories:

1. Alien medical doctors who were, on 9 January 1978, fully and permanently licensed to practice medicine in a state and who were practicing medicine in a state on that date. They are considered to have passed Parts I and II of the NBME examination. [PL 95-83, section 602(a), technical amendment as a note to 8 U.S.C 1182] The term "state" means any state of the United States plus the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, as defined in section 101(a)(36) of the Act.

2. Alien doctors who graduated from a school accredited by a body approved by the secretary of education. In effect, this means aliens of any nationality who have graduated from a U.S. or Canadian medical school.

3. Alien medical doctors who are considered to be "of national or international renown" in the field of medicine. [Act 101(a)(41)] The departments of State and Justice are responsible for developing guidelines to determine whether a foreign medical doctor is "of national or international renown." These guidelines have yet to be issued, but only those alien doctors who have made outstanding contributions in their fields of medical specialization can expect to be so designated.

4. Those physicians who will have no patient-care responsibilities and will not, therefore, be engaged in the practice of medicine. Most common in this category are teachers and researchers in the basic sciences who are engaged in classroom teaching and laboratory research only.

5. Those medical doctors who are applying for immigrant status on the basis of a family relationship to a U.S. citizen or permanent resident (immediate relative, first, second, third or fourth preference) rather than on the basis of their profession. In order to practice medicine in the United States, however, it would usually be necessary for such a medical doctor to pass an acceptable exam for and obtain ECFMG certification in order to secure state licensure.

6. Physicians who are successful beneficiaries of a second employment-based preference petition that was approved based upon national interest (see Section 13.4.3.2.2).

13.4.4.3 Exchange visitors subject to the 2-year home-country residence requirement

Persons who hold or held J-1 or J-2 exchange-visitor status and who are subject to the 2-year home-country residence requirement of section 212(e) of the Act are not eligible to become immigrants until they have either satisfied that requirement or have had it waived (see Section 9).

13.4.4.4 Aliens admitted under the Visa Waiver Program

Unless he or she is an immediate relative of a United States citizen (see Section 13.4.2.1.1), an alien admitted to the United States as a Visa Waiver Program visitor (see Section 13.2.2.6) is ineligible for adjustment of status. [8 CFR 245.1(b)(15)]

13.4.5 Procedures for establishing qualifications for immigrant status

Aliens may establish their qualifications for immigrant status through a petition filed with INS or with a consular office, and/or through receiving a labor certification or establishing that labor certification is not required in their cases.

13.4.5.1 Petitions for family members

Aliens who qualify for immigrant status on the basis of family relationship to a U.S. citizen or permanent resident (immediate relatives, first, second, third, and fourth preferences) establish that qualification by filing a Petition for Alien Relative, Form I-130. The petition is filed by the U.S. citizen or permanent-resident family member (the petitioner), on behalf of the alien (the beneficiary). If the petitioner is residing in the United States and the beneficiary is not, the petition is filed with the regional service center having jurisdiction over the petitioner's place of residence. If the beneficiary is also living in the United States, the petition can be filed with the INS regional service center having jurisdiction over the petitioner's or the beneficiary's place of residence. If an immigrant visa is immediately available in the appropriate classification, such as in the case of an immediate relative, the petition may be filed with the INS district office that has jurisdiction over the beneficiary's place of residence along with an application for adjustment of status to permanent resident. At the same time, the beneficiary may apply for work authorization and will receive an employment authorization card. This will allow him to work during the period the application for permanent residence is pending with INS. If an immigrant visa is not immediately available at the time of filing the I-130 petition, as in second and fourth preference petitions, the petition must be filed alone. However, if at a later date visas become available under that category and the beneficiary is in legal nonimmigrant status he may still apply for adjustment of status at the local INS office.

If the petitioner is residing abroad, the petition is filed with an INS office abroad or, in certain cases, with a U.S. consular office. [8 CFR 204.1] A petitioner living abroad should consult the nearest American consulate to learn the location of the consular office or foreign office of INS designated to act on the petition. Instructions for completing and filing the petition are included on the Form I-130. A fee is required. Labor certification is not required.

13.4.5.2 Petitions for employment-based immigrants

Aliens who qualify for immigrant status on the basis of their profession or occupation establish that qualification by filing Form I-140, Petition for Immigrant Worker, or I-360, Petition for Special Immigrants.

A Form I-140 petition with accompanying labor certification, if applicable, and supporting documentation or evidence must be signed by the petitioner (employer) and filed with the INS regional service center having jurisdiction over the intended place of employment of the beneficiary (alien worker). I-140 petitions may not be filed jointly with an application for adjustment of status to permanent resident at the local district office having jurisdiction over the beneficiary, even if immigrant visas are immediately available in the category for which preference status is sought.

Instructions for completing and filing the petition, as well as for the documentation required, are included on the Form I-140. A fee is assessed. Once Form I-140 is approved, steps for applying for permanent residence status need to be taken (see below and Sections 13.6 and 13.7)

13.4.5.3 Priority dates

The priority date is the date on which the alien is considered to have entered the waiting line for an immigrant visa. The priority date of any petition filed for classification under all family-based and most employment-based preference petitions is the date the completed, signed petition and supporting documentation (including the fee) are properly filed with INS. [8 CFR 204.5 and 204.6] However, if a labor certification is a prerequisite to filing an employment-based immigrant visa petition, the priority date is the day the application for alien labor certification is filed with the local state labor department.

Under the law as it existed before October 1990, the waiting periods for employment-based immigration were anywhere from 2 to 5 years. Inasmuch as the Act of 1990 increased the annual allotment of immigrant visa numbers for employment-based immigration from 54,000 to 140,000, the waiting period for eligibility to apply for permanent residence generally entails only the normal processing times at the labor department and at INS. Once an I-140 petition is approved, eligibility for permanent residence should generally be current. See Sections 13.6 and 13.7 for filing for permanent residence status.

13.5 LABOR CERTIFICATION

13.5.1 Definition and purpose

A labor certification is a determination and certification by the U.S. Department of Labor (DOL) that "(A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts), and available" to fill positions of the kind being offered a specific alien, and "(B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed." [Act 212(a)(14); 20 CFR 656] The goals of the labor-certification process are to assure that aliens seeking employment in the United States will not be taking jobs for which qualified U.S. citizens or permanent residents are available and will not be employed under conditions less favorable than those under which qualified U.S. citizens or permanent residents would be employed, and thus will not adversely affect the wages and working conditions of U.S. workers.

Anyone working with labor-certification applications is well advised to study *Technical Assistance Guide 656* (1981) issued by the Department of Labor (DOL) (see Section 13.5.6).

13.5.2 Applicability of the labor-certification requirement

Generally, labor certifications are required of prospective immigrants who are coming to the United States for the purpose of entering the labor force. Aliens who require a labor certification are generally those who apply for employment-based second and third preference classification. [Act 212(a)(14)] A labor certification is not required for petitions filed based on a family relationship, application for refugee status, and certain other prospective immigrants such as priority workers and special immigrants.

13.5.3 Schedules A and B

To avoid having to adjudicate every labor-certification application on a case-by-case basis, DOL has determined that there are some occupations in which a shortage of qualified workers exists. The list of these occupations is known as Schedule A. DOL has also determined that a sufficient number of workers is available for certain other occupations. The list of these occupations is known as Schedule B. Aliens in occupations listed on Schedule B are not eligible for labor certification unless a prospective employer can establish that qualified U.S. workers are not available for a particular job opening. Schedule B includes such workers as janitors, parking lot attendants, and elevator operators. Schedules A and B appear in 20 CFR 656.11. Labor certification applications involving occupations not on Schedules A or B are discussed below in Section 13.5.4.

13.5.3.1 Schedule A

Since the Act of 1990 established new avenues for establishing eligibility for permanent residence based on employment, DOL has essentially reduced the groups of occupations on Schedule A from four groups to two; these are discussed below. Aliens who qualify for the occupations listed in Schedule A are considered "precertified" on the basis of their qualifications. Prospective employers need not demonstrate, as they must in the case of non-Schedule A applications, that they have been unable to obtain qualified U.S. workers for a particular job. These are known as "blanket" certifications. [20 CFR 656.10]

13.5.3.1.1 Group I—Nurses and physical therapists. Only two occupations, physical therapy and nursing, remain in Group I, which formerly was much larger. [20 CFR 656.10(a)] To qualify in this group, a physical therapist needs to hold a bachelor's degree and possess a license or statement signed by an authorized state physical therapy licensing official in the state of intended employment stating that he or she is qualified to take the licensing examination. An alien nurse must have passed the Commission on Graduates of Foreign Nursing Schools Examination or hold a full and unrestricted license to practice professional nursing in the state of intended employment. To file a petition based on Group I see Section 13.5.3.2.

13.5.3.1.2 Group II—Aliens of exceptional ability in the sciences and arts. Group II includes aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill.

It is not imperative that an alien possess a degree in order to qualify under Group II. Most university-related Schedule A applications come under the terms of Group II. [20 CFR 656.10(b)]

13.5.3.1.3 Groups on Schedule A prior to 1 October 1991. Prior to the change in the law, two additional groups were listed in Schedule A: Group III aliens (aliens seeking to enter the United States in certain religious occupations or to work in certain religious activities) and Group IV aliens (aliens currently working in managerial or executive positions with international corporations or organizations that wish to use the aliens' services in the United States). Aliens falling into these groups must now file visa petitions under the newly created employment-based preference categories.

13.5.3.2 Procedure for Schedule A applications

Schedule A, Group I, applications are filed with the INS regional service center in the United States having jurisdiction over the proposed place of employment. The application is made on Form ETA 750, parts A and B. The employer must simultaneously file a Form I-140, Employment-based Preference Petition, and supply documentary evidence of the alien's qualifications. [20 CFR 656.22(c)] Further, for all applications filed after 1 October 1991, the employer must include evidence that notice of the filing of an application for permanent labor certification for the relevant occupation has been provided to a bargaining representative, if applicable, or, if no representative exists, that such notice was posted for 10 consecutive business days. For Group I occupations, the notice must include a description of the job and rate of pay, as well as provide a statement notifying the public where any information regarding the application or occupation should be provided. [20 CFR 656.20(g)(8)] See Section 13.5.4.1 for more details regarding these new notice requirements for Group I occupations.

In addition to the Form ETA 750, Form I-140 and adherence to new notice requirements (see Section 13.5.4.1), federal regulations require that applications filed under Group II include documentary evidence as to the current widespread acclaim and international recognition accorded the beneficiary by recognized experts in his field, documentation showing that his intended work in the United States will require exceptional ability and documentation from at least two of the following:

1. documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
2. documentation of the alien's membership in international associations in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their fields;

3. published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought;

4. evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of the specialization to that for which certification is sought;

5. evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

6. evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; and/or

7. evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country. [20 CFR 656.22(d)]

INS makes decisions on Schedule A applications simultaneously with decisions on employment-based preference petitions, provided they are filed at the same time.'

13.5.4 Non–Schedule A occupations

In order to secure a labor certification for a non–Schedule A occupation, DOL's Employment and Training Administration must determine not only that the applicant has the requisite qualifications for the occupation but also that there are no qualified U.S. workers available to fill the position and that the position offers prevailing wages and working conditions not lower than those under which similarly qualified U.S. citizens or permanent residents work. Applications for labor certification for non–Schedule A positions (called "individual" labor certifications) are filed on Form ETA 750 with the state employment service office having jurisdiction over the alien's prospective place of employment. The Form ETA 750 and accompanying documents must demonstrate that the prospective employer has made a conscientious effort to recruit a qualified U.S. citizen or permanent resident to fill the position. The application must describe the job duties and state the minimum education, training, and experience necessary to perform the duties of the position in a satisfactory and reasonable manner. The job requirements must be clearly job related and the alien must possess these qualifications. Certification is likely to be denied if there is any suggestion that the employer has tailored the list of qualifications in such a way as to make anyone other than a particular alien appear unqualified for the position.

The position that is offered must be a permanent one if the labor certification is to be used as the basis for an application for an immigrant visa. Although the term "permanent" is not expressly defined in the regulations, it is usually interpreted to refer to a job offer that does not have a specified termination date, but certainly longer than 1 year.

13.5.4.1 Revisions in the labor-certification process brought about by the Act of 1990

The Act of 1990 made several changes to the labor-certification process. Notice requirements, for example, have become more stringent for all labor-certification applications, and third-party complaints are now easier to file.

With regard to the new notice requirements for all labor-certification applications filed on or after 1 October 1991 (including applications for college and university teachers under special handling and all Schedule A occupations under blanket labor certification), the petitioning employer must now document that notice of the filing of the application for labor certification was provided to the bargaining representative of the employer's employees (for the occupational classification for which certification is sought) in each of the employer's facilities located in the area where the alien will work. If there is no such representative, the employer must post a notice in a conspicuous place on the employer's premises for at least 10 consecutive days. The notice must state that an application for permanent-alien labor certification for the relevant job opportunity has been filed and that any person may provide documentary evidence bearing on the application to the local Employment Service Office (a division of the State Employment Security Agency, DOL) and/or the regional DOL certifying officer. For all applications except Schedule A applications, the notice must also include all information required for advertisement of the job, such as the job description, the minimum requirements for the job and the salary offered (except for special handling, see Section 13.5.4.3) and hours to be worked per week. It must also invite any individuals interested in the job opportunity to report to the employer. [20 CFR 656.20(g)] Inasmuch as Schedule A applications do not require advertising, the information regarding the position on the notice for such applications must include only the description of the job and rate of pay.

If an application is filed under preapplication recruitment, the notice does not have to be posted during recruitment (see Sections 13.5.4.2 and 13.5.4.2.1). If an application is filed under postapplication recruitment, the notice shall be provided in conjunction with the required recruitment at the direction of DOL (see Section 13.5.4.2.2). If an application is filed on behalf of a college or university teacher, the notice or posting must include the information required for advertisements by 20 CFR 656 21a(1)(iii)(B). It must also invite applications to be directed to the employer, provide notice that an application for alien labor certification is being filed for such job opportunity, and state that any person may provide evidence bearing on such application, as articulated above (also see Section 13.5.4.3).

With regard to third-party complaints, 20 CFR 656.20 states that any person may submit information about labor-certification applications including information about wages, the availability of U.S. workers, or the employer's failure to meet the terms and conditions within the application for labor certification with respect to the employment of the alien or co-workers.

13.5.4.2 Positions other than college and university teachers (basic labor-certification process)

In the case of non–Schedule A positions that do not involve college or university teaching, labor certifications can be issued only if there are no minimally qualified U.S. workers available and willing to take the position. If a minimally qualified U.S. worker applies for the position and is willing to accept it, a labor certification will not be granted, even if the alien applicant is better qualified. (Requirements for the basic labor-certification process are detailed in 20 CFR 656.21.)

Forms ETA 750, parts A and B, must evidence the following:

1. The qualifications of the alien
2. A description of the job offer
3. The working hours and salary offered
4. No unduly restrictive job requirements
5. A willingness to place the job offer in the state employment service system and proceed with advertising, to provide notice of the filing of a labor-certification application to bargaining representatives (or to post the opening internally) if the state labor department so directs, and to offer evidence that preapplication recruitment was done.

13.5.4.2.1 Preapplication recruitment. Not all regions allow for preapplication recruitment, and the DOL should be contacted before preparing an application for labor certification based on preapplication recruitment. In those regions that do allow for such recruitment, documentation must be submitted along with ETA 750 that within the prior 6 months good-faith efforts were made to recruit U.S. workers through advertising, notification to the state employment service, employment agencies, or other sources normal to recruitment in that occupation and that such efforts have been unsuccessful. This documentation should include:

1. Identification of the recruitment sources used
2. Number of U.S. workers responding
3. Number of U.S. workers interviewed
4. Wages and working conditions offered
5. A copy of an advertisement that ran in a newspaper of general circulation for 3 consecutive business days or in one issue of an appropriate professional publication
6. A copy of a notice of job availability stating that an application for labor certification was being filed for the job opportunity and indicating where any information bearing on the application could be submitted. Also required is a statement confirming that such notice was either prominently posted at the place of business for 10 consecutive days or was provided to a bargaining representative, if applicable (see Section 13.5.4.1 for more details on new notice requirements).
7. The lawful job-related reasons why U.S. applicants were considered unqualified and/or evidence that a qualified applicant was offered the position but declined it.

If any résumés were received during the recruitment effort, copies must be provided to the labor department. Many universities and colleges refuse to provide this information on grounds of protecting privacy. If the reasons are made clear, regional certifying officers will sometimes permit institutions to omit the names and resumes and to substitute coded identifications, such as "Applicant A, Applicant B," and so on.

8. A request for a waiver of further recruitment. The regional certifying officer may reduce any or all postapplication recruitment efforts if satisfied that the employer has conducted adequate preapplication recruitment with no success. A letter directed to the certifying officer requesting a waiver of further recruitment may be attached to the Form ETA 750 and should describe the unsuccessful recruitment efforts of the last 6 months and explain why the employer believes that further recruitment efforts would prove unsuccessful.

If the request for a waiver of further recruitment is denied or if there has been no preapplication recruitment, the employer must enter the job into the state employment service system and comply with the advertising and posting requirements described above at the direction of DOL. The waiver of further recruitment is generally denied when the DOL has information in its job service indicating that there are U.S. workers seeking employment in the occupation for which certification is being sought.

13.5.4.2.2 Postapplication recruitment. Once the local office of the state labor department reviews an application for labor certification, it will request that the employer conduct recruitment if a waiver of further recruitment has not been requested and granted. Generally, the information required in preapplication recruitment is identical to that required in postapplication recruitment (see Section 13.5.4.2.1).

In the postapplication recruitment process, the state employment service will normally wish to screen and edit the language used in the job advertisement. In some instances, it may be judicious to gain approval of the job-advertisement language and the wage offered in advance of preapplication recruitment as well. In both pre- and postapplication efforts, the regulations require the inclusion in the job advertisement of a salary or salary range on the grounds that U.S. workers would have a stronger inducement to apply for a position if they knew the wage being offered. Additionally, in postapplication recruitment, applicants are instructed to send their résumé to the local job service, which in turn forwards the résumés to the employer.

To save time and to avoid having to provide the names and résumés of all U.S. applicants for the position, institutions wishing to employ alien researchers and other staff may wish to use the preapplication recruitment procedure whenever possible if it is determined that, in the institution's DOL region, the certifying officer is willing to grant requests for waivers of postapplication recruitment.

On 16 December 1987, DOL disseminated "Permanent Alien Labor Certification Advertising Guidelines" that specify publications or types of publications considered appropriate for advertising various kinds of positions. These guidelines are reproduced in *Interpreter Releases*, 24 March 1988, pp. 255-60.

13.5.4.3 College and university teachers ("special handling")

Standards and procedures for labor-certification applications involving college or university teachers are different from those involving other kinds of positions. These procedures are referred to as "special handling;" cases so identified frequently receive expedited treatment. In the case of a college or university teacher, a labor certification can be issued if the alien is as least as qualified for the position as any U.S. applicant. [Act 212(a)(5)] This provision applies only to college and university teachers who engage in at least some classroom instruction, according to the *Technical Assistance Guide*. The amount of teaching is not specified. Special handling does not apply to researchers or other college and university staff members. The complete regulations concerning labor certification for college and university teachers are found in 20 CFR 656.21a; additional information is found in DOL's *Technical Assistance Guide 656*.

Application for a labor certification for a prospective college or university teacher is made by filing Form ETA 750, parts A and B, in duplicate (some offices request it in triplicate or quadruplicate) with the state employment service office serving the area in which the college or university is located. Along with the completed Form ETA 750, the employer must document that notice of the filing of the application was provided to the bargaining representative of its employees in the occupational classification for which certification is being sought, or if there is no such representative, that the notice was posted in a conspicuous place for 10 consecutive days. The notice must include the information that was included in the advertisement for the job opportunity as set out in the regulations for special handling, but need not be posted at the time recruitment was conducted (see Section 13.5.4.1 for details on required elements in the notice). [20 CFR 656.20(g)(6)] The employer must also submit "documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the U.S. workers who applied for the job." [20 CFR 656.21a(a)(l)(iii)]

Evidence concerning the competitive recruitment process is to include the following:

(A) A statement, signed by an official who has actual hiring authority, ... outlining in detail the complete recruitment procedure undertaken, [and including]

(1) The total number of applicants for the job opportunity;

(2) The specific, lawful, job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

3) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien...;

(B) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(C) Evidence of all other recruitment resources utilized; and

(D) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements. [20 CFR 656.21a(a)(l)(iii)]

Labor-certification applications for college and university teachers must be filed within 18 months of the selection. Upon receipt of a labor-certification application for a position for a college or university teacher, the local state employment service office will date-stamp the application and make sure that it is complete. The local office will calculate the prevailing wage for the job to assure that the salary being offered the alien is not below the prevailing wage. Finally, the local office will send a file containing the application and any additional information pertaining to it to the state employment service, which in turn will forward it to the DOL regional certifying officer. Note that in the case of labor certifications for college and university teachers no additional recruiting is required following submission of the application.

13.5.4.4 Processing of non–Schedule A applications

The employer must file Forms ETA 750, parts A and B, and all supporting documentation with the local state employment service office, which carries out an initial screening of the application for completeness and for compliance with all regulatory requirements (see Sections 13.5.4.2 and 13.5.4.3). The local office also calculates the prevailing wage for the job and puts its findings into writing. If the local office finds that the wage rate offered is below the prevailing wage, it advises the employer in writing to increase the amount offered or provide countervailing evidence, in the form of other, more accurate wage surveys, that the wage offer is, indeed, accurate. Failure to comply with this advice may result in denial of the labor certification. Employers will sometimes find it useful to include in their applications comparative wage data about highly specialized research positions to guide the local office in establishing the prevailing wage. If the wage and all requirements for the position are acceptable to the labor department and the application lacks any recruitment documentation, the labor department will request that recruitment commence. After recruitment is completed, the application will then be forwarded, with a recommendation, to the regional certifying officer, who will make a final determination.

The entire labor-certification process may be lengthy. It ranges from less than a month in some parts of the country to more than 1 year in others. In the latter situations, institutions should explain to all state and federal officials involved what hardships are created by such lengthy processing periods and explore every possibility for reducing the time required.

It is worth noting that differences other than the processing time exist among the 10 regional alien certification offices. Because wages and the availability of qualified U.S. workers vary among the different regions, the labor-certification process for a given alien in a given profession could have very different results in Texas, for example, than in California. Furthermore, some regional offices consistently approve (or deny) a higher percentage of applications than do others.

13.5.4.5 Procedures following decision on non–Schedule A applications

Decisions on non–Schedule A applications are made by the regional certifying officer at the regional office of the DOL Employment and Training Administration having jurisdiction over the state employment service office where the application was filed. The decision is made on the basis of the application form, the supporting documents, information added by the state employment service, and information about the labor market. [20 CFR 656.25]

If the certifying officer believes the application is not approvable, the employer is sent a dated Notice of Findings, which gives the specific reasons for which the regional certifying officer has tentatively determined that the application is deniable; the date by which the employer must rebut the Notice of Findings (35 calendar days from the date of issuance of the Notice of Findings); and an explanation of the rebuttal procedures that the employer should follow.

A written rebuttal to the Notice of Findings can be submitted by the employer or by the alien, but the alien can submit a rebuttal only if the employer also does so. The rebuttal must be sent by certified mail within 35 calendar days of issuance of the Notice of Findings. The rebuttal may contain evidence or arguments intended to refute statements made in the Notice of Findings, or to show that defects described in the Notice of Findings have been remedied. If no rebuttal is submitted, the Notice of Findings becomes a denial that is not subject to administrative review. If a rebuttal is submitted, the certifying officer will consider it and then either approve or deny the labor certification.

If the application is approved, either originally or following a rebuttal to a Notice of Findings, the regional certifying officer applies an official stamp to the application and sends the application, supporting documentation, and the completed final determination form either to the employer or to the employer's agent, as appropriate. The final determination form carries instructions concerning the next step to be taken in seeking an immigrant visa for the alien (filing the I-140 petition).

If the application is denied, the certifying officer will send the employer a final determination form giving the date of the denial, the reasons for the denial, and information about appeal procedures open to the employer. After 6 months, the employer may apply anew for a labor certification for the same position. (There is no waiting period if the certification was denied because the wage or salary offered was below the prevailing wage.)

An approved labor certification does not confer employment authorization. It is, in effect, merely a supporting document for an employment-based preference petition.

13.5.5 Appeals

When a non–Schedule A application has been denied, either the employer or the alien (only if supported by the employer) can request an "administrative-judicial review." The request must be filed in writing within 35 days of the final denial and issuance of the final determination form, and it must meet the guidelines spelled out in 20 CFR 656.26. The review is conducted by an administrative law judge (or panel of judges) working under the Board of Alien Labor Certification Appeals, created in April 1987. [20 CFR 656.26, 656.27, 656.27a, and 656.05] This board makes precedent rulings that are expected to bring about more consistency among the regional certifying officers.

13.5.6 Further information regarding labor certification

The above description is a simplified summary of very complicated and detailed procedures and standards set forth in DOL regulations, as published in 20 CFR 656. The text of 20 CFR 656, with extensive and helpful notes, sample forms, and full instructions, appear in DOL *Technical Assistance Guide 656*, which is available from state employment service offices, DOL regional offices, or the Government Printing Office. The supplementary assistance the guide offers is especially helpful, as Form ETA 750 and its accompanying instructions provide inadequate guidance on the labor-certification procedure.

13.6 Applying for an Immigrant Visa Abroad

Once the classification for a prospective immigrant has been determined—whether through a family or employment relationship—and the appropriate immigrant-visa petition has been filed and approved and the individual's priority date reached, he or she is eligible to apply for an immigrant visa (see Section 13.4.2 on numerical limitations and Section 13.8.2 on availability of visa numbers). Individuals who have maintained and are currently in legal nonimmigrant status have the option of applying for the immigrant visa in the United States (adjustment of status) or of returning to their native country and applying at the U.S. consulate closest to their home abroad (consular processing). However, individuals who have violated their nonimmigrant status in any way are statutorily barred from obtaining an immigrant visa abroad unless they have remained outside the United States for at least 90 days (see Section 13.7.1).

Once INS approves the visa petition, it is sent to the Department of State's National Visa Center (NVC) in Portsmouth, New Hampshire. Upon receipt of the approved visa petition from INS, the processing center determines (1) the country to which the petition will be sent and (2) whether the immigrant visa is available, and it supplies the prospective immigrant with the necessary application form and instructions, often known as "Packet 3." In addition to an application form, the packet includes a biographic data sheet and instructions regarding necessary documents and procedures to prepare for a consular interview. The processing center then forwards the approved petition to the American consulate designated on the approved petition. If there are no immigrant visas available for the category in which the individual has applied, NVC will retain the visa petition until visa numbers are close to becoming available.

Once the applicant receives Packet 3, he or she must inform the consular office that all of the necessary documents are available. When the necessary procedures have been completed at the consular office, the final interview is scheduled and notice is sent to the applicant, along with the forms for the principal beneficiary and all dependents, if applicable, to complete for the interview. At this point the applicant and all dependents must make arrangements to take medical examinations, in accordance with the instructions of the consulate, and appear at the interview. If they opt to leave the United States to appear at the interview and are in valid nonimmigrant status at the time they depart, they will rarely be required to be away for more than 1 week. On the other hand, if they are not in valid nonimmigrant status at the time they depart the United States, they will be required to be away for at least three months. Clearly, processing at a consular office abroad is no longer a practical option for those who have failed to maintain their nonimmigrant status.

The alien's documents are reviewed at the time of the interview, and the visa is either granted or denied. If the visa is approved, the alien (and family, if applicable) must enter the United States within 4 months, at which time he or she is issued an immigrant visa in the form of a stamp in his passport. The laminated alien registration card or "green card" (which is now pink) will be sent to the individual's home address within 6 months. If the card does not arrive, an inquiry to the immigration card facility in Arlington, Texas, should be made on Form G-731. This form is available at INS.

13.7 APPLYING FOR ADJUSTMENT OF STATUS IN THE UNITED STATES

The process of obtaining immigrant status by adjusting from nonimmigrant to immigrant status while in the United States is basically the same as that for obtaining an immigrant visa abroad. It involves establishing eligibility for an immigrant visa by one of various means, filing a preference visa petition at an INS service center, and obtaining the preference approval. It also requires that an immigrant visa be immediately available to the prospective applicant, that is, the applicant's "turn" in the preference system's "waiting line" must have arrived; his or her priority date must be current. Those individuals who have maintained their nonimmigrant status in the United States at all times and never worked without INS authorization are eligible to adjust their statusd to permanent residence. Similarly, individuals who are being petitioned by a U.S. citizen spouse, son, or daughter as an immediate relative may adjust status so long as they entered the United States with a valid visa (see Sections 13.4.2.1.1 and 13.7.3). Individuals who have violated their nonimmigrant status are also eligible for adjustment of status, but they must pay a fine of five times the normal filing fee for the application (see Section 14.8 for more detail).

Once the visa petition is approved and the alien's priority date is current, he or she may make formal application to adjust his status from nonimmigrant to immigrant at the local INS district office having jurisdiction over his or her place of residence.

13.7.1 Adjustment of status for previously ineligible persons

Although otherwise qualified to apply for an immigrant visa, many aliens in the United States were generally ineligible, until October 1994, to adjust to immigrant status in the United States. (Ineligibility for adjustment of status is quite distinct from ineligibility for a visa and admission, as described in Section 13.4.4.1.) As of 1 October 1994, certain individuals who previously were not eligible to apply for adjustment of status in the United States may now do so. (Act 506(a); 245 (i)] Such aliens include those:

1. admitted as transit aliens (C visa or TWOV on I-94) and crewmen (D visa);
2. who were not inspected at the U.S. border;
3. who failed to maintain their nonimmigrant status, except immediate relatives of a U.S. citizen (see Section 13.7.3); and
4. who worked in the United States without authorization, except for immediate relatives of a U.S. citizen (see Section 13.7.3).

The foregoing aliens are statutorily barred from obtaining an immigrant visa abroad unless they remain outside the United States for at least 90 days. Thus most will opt to apply for adjustment of status in the United States. Those aliens previously unable to adjust their status must file a supplement to the application for permanent residence (I-485), pay the regular filing fee for adjustment processing, and pay an additional fee, or penalty, equal to five times the filing fee, for the privilege of applying in the United States. Children under the age of 17 at the time of application are exempt from the penalty fee. These provisions of the Act will expire on 1 October 1997.

13.7.2 Application for adjustment of status

An alien who is eligible to seek adjustment to immigrant status on the basis of an approved immigrant-visa petition must file Form I-485 and supporting documents to the local INS district office in the jurisdiction where the alien resides. Similarly, if their visa status is based on a derivative relationship with the principal alien, a spouse and minor children who are also in the United States must file Form I-485 at the same time. Filing may be done in person or by mail. Some offices require seeing an original passport. It is advisable to file the application in person. Upon filing an application for permanent residence status, an alien is entitled to apply for employment authorization on Form I-765 and will be issued an employment authorization card, valid for 6 months to 1 year (see Section 13.7.4). Each district office has its own procedures for filing a request for work authorization and applications for permanent residence.

Documents usually required to adjust status include an immigrant visa approval notice on Form I-797, Form I-485 (Application for Permanent Residence); Form I-486 (Medical Examination and Immigration Interview); Form G-325A (Biographic Data); evidence of financial support, including a confirmation of employment from the same employer that filed an employment-based preference petition on behalf of the applicant; fingerprint cards; birth certificate; marriage or divorce certificate(s) (if relevant to the application); proof that the applicant has been maintaining lawful nonimmigrant status, if applicable; photographs that meet certain specifications; and the required fee. The instructions on the application for permanent residence specify what supporting documents are needed for each particular application. Some districts require a medical examination before an application for permanent residence can be filed. Others allow the applicant to bring the results of the medical examination to the interview. In either case, INS will provide a list of physicians who are authorized by INS to conduct medical examinations; the exam must be completed by one of those specified.

Some districts provide one-step processing. That is, the alien may bring in all forms and documentation, pay the fee, be interviewed, and then wait for approximately 90 days to receive notification that permanent-resident status has been granted. In other districts, the application and supporting documentation are filed with INS and the alien is scheduled for a later interview before an INS officer. The interview takes place approximately 90 to 240 days after the initial application. Applicants receive written notification of the date and time of the interview and are told what documents they must bring to the interview. In other districts, the application and supporting documentation are filed with INS and the alien is notified of the date and time of the interview 2 or 3 weeks beforehand. In the latter two scenarios, permanent residence is granted at the interview if the INS officer is satisfied with the application. At this time the applicant is issued an immigrant visa in the form of a stamp in his or her passport. In some districts the personal interview will be waived for applications based upon employment-based petitions. In this case, INS simply sends notification of approval to the applicant with instructions for final processing. The laminated alien registration card ("green card") will be sent to the individual's home address within 6 months of completion of the case. If the card does not arrive, an inquiry to the immigration card facility in Arlington, Texas, should be made on Form G-731. This form is available at INS.

13.7.3 Adjustment of status of an immediate relative

If an alien is in the United States, an I-130 visa petition need not have been approved in order to file for adjustment of status to permanent resident if that alien will be classified as an immediate relative (parent, spouse, or minor child of a U.S. citizen). In this case, Form I-130 may be filed concurrently with Form I-485 and other required documentation as set out in Section 13.7.2 at the local INS office in the area where the beneficiary resides. Aliens classified as immediate relatives who overstayed their nonimmigrant visa, entered the United States on the visa waiver pilot program, or worked without authorization are still entitled to apply for adjustment of status without paying a penalty fee (see Section 13.7.1). However, if the alien entered without a nonimmigrant visa, he is still eligible to adjust status provided he pays the penalty fee.

If the applicant is the spouse of a U.S. citizen (or permanent resident) and the marriage is less than 2 years old at the time the applicant is granted permanent residence, the applicant will receive "conditional" permanent residence, a condition that must be removed after 2 years as a permanent resident (see Section 13.10).

13.7.4. Work authorization pending application

All applicants who apply for adjustment of status are eligible to apply for employment authorization. The application is submitted on Form I-765. An applicant for adjustment of status who possesses a nonimmigrant visa that entitles work authorization (such as an H-1B) may still need to apply for permission to work if that nonimmigrant status will expire during the pendency of the adjustment-of-status application. Similarly, an applicant for adjustment of status who currently holds an H-1B visa for one employer and wants to work for another, even part time, during the pendency of an adjustment-of-status application must also obtain work authorization. Even though the employment authorization card is valid for 6 months to 1 year, employment authorization is generally terminated if the application for adjustment of status is denied.

13.7.5 Departure from the United States during processing of application for adjustment of status

Unless special provisions for return to the United States are made, a person who has applied for adjustment of status under section 245 of the Act is considered to have abandoned the application if he or she leaves the United States while the application is pending. To avoid abandoning the application, the alien should, before leaving the United States, apply to the district INS office for "advance parole," which is granted on Form I-512. [8 CFR 212.5(c)] The INS will grant advance parole only if the request (made on Form I-131 and accompanied by two photographs) is presented with convincing evidence that the alien's temporary departure from the United States is necessitated by a business matter or family emergency. Aliens are eligible for advance parole in these circumstances only after they have filed applications for adjustment of status (Form I-485).

13.8 TIME REQUIRED TO OBTAIN IMMIGRANT VISA OR STATUS

Two factors influence the length of time required to obtain an immigrant visa while abroad or to adjust to immigrant status in the United States. One factor is the processing time for petitions and applications; the other is the availability of visa numbers.

13.8.1 Processing time

The amount of time required to adjudicate visa petitions and immigrant-visa applications depends on the staffing and workload at the particular INS or consular offices (the time required for action on labor certifications is discussed in Section 13.5.4.3). In some locations this processing time can be as little as 2 months, although processing times of 6 months to 1 year are becoming increasingly prevalent. Advisers can ask INS district offices for an estimate of the time required to process various petitions and applications.

13.8.2 Availability of visa numbers

If an alien's priority date has been reached, an immigrant visa is immediately available (see Section 13.4.5.3). In recent years, it had become rare for visa numbers to be immediately available for most preference classifications. Although the Act of 1990 substantially increased the number of visas for employment-based immigration and many visa numbers may now be immediately available, backlogs in most family-based preferences will still vary in length from several months to several years. Information about priority dates and backlogs is available in a publication called the *Visa Office Bulletin*. The *Bulletin* is a monthly publication of the Visa Office of the Department of State and provides information about the availability of immigrant visas for each preference classification. One may receive the *Bulletin* at no charge by sending a request to *Visa Bulletin*, Visa Office, U.S. Department of State, Washington, D.C. 20522-0113.

13.8.3 Problems caused by delays

Even in the best of cases, several months will pass from the time an employer files an application for labor certification to the time the beneficiary files for adjustment of status to that of a permanent resident or receives an immigrant visa.

For example, assuming that all the necessary documents can be assembled for an application for labor certification in a month, the labor certification itself might be approved in 6 months, and the I-140 petition will take approximately 2 months to be adjudicated by INS. Application for permanent residence takes at least 4 more months. Thus, it is impossible to complete the entire process in less than 1 year. As each region within the United States has different processing times for each step in the process, careful planning and a knowledge of the delays involved are necessary to avoid situations in which aliens cannot legally assume the positions for which colleges and universities wish to hire them. In light of the fact that "dual intent" has been statutorily recognized (see Section 10.3.2.3), it is possible for the employer to apply for an H-1B visa on behalf of the alien and offer temporary rather than permanent employment at any time during the labor-certification process.

13.9 IMMIGRANT DOCUMENTATION

When an alien first enters the United States as an immigrant or is granted immigrant status through adjustment of status, he or she is first issued a passport stamp indicating temporary evidence of permanent residence. The stamp is generally valid for 6 months, during which time the Alien Registration Receipt Card, Form I-551 (formerly Form I-151) is processed and sent to the alien. The stamp is evidence of permanent residence and employment authorization and can be used for travel abroad. The alien registration card is a laminated rectangular card, 2-1/8" by 3-1/2" in size. It is commonly known as the "green card," although the current edition is pink and blue. Other colors have been used in the past, the most prevalent being white with salmon stripes. The current pink edition also shows an expiration date of 10 years from the date of issuance. No additional qualifications are required of the alien upon renewal, although a new picture, fingerprint, and signature will be necessary. By placing an expiration date on the card, INS hopes to cut down on fraudulent uses. Immigrant aliens are required by law to carry the "green card" at all times. [Act 264(e)]

13.10 MARRIAGE FRAUD AMENDMENTS

Section 216 of the Act places into "conditional permanent-resident status" for 2 years all aliens who qualify for immigrant status through a marriage to a U.S. citizen or permanent resident entered into less than 2 years before permanent residence was obtained. The benefits afforded this group of aliens with respect to reentry to the United States, work authorization, etc., are identical to those given to other permanent residents. The 2 years spent in conditional status count toward the residence requirements for naturalization.

For conditional status to be removed (and permanent residence made unconditional), the couple must, during the 90-day period preceding the second anniversary of acquisition of conditional status, jointly file Form I-751 to the regional service center having jurisdiction over their place of residence and, if INS deems necessary, appear at a scheduled interview to establish that the marriage was not judicially annulled or terminated other than by the death of a spouse, was not entered into for the sole purpose of procuring an alien's entry as an immigrant, and did not entail any fee or other consideration for filing the immigration petition. Conditional status may also be removed, at the discretion of INS, if the alien's deportation would result in "extreme hardship," if the "qualifying marriage" was entered into in good faith but has been terminated for "good cause," or if, during the marriage, the alien was battered or subjected to extreme cruelty by the petitioning spouse and the alien was not at fault for failing to meet the statutory requirements. Under such circumstances, Form I-752 is filed by the alien with supporting documentation as articulated on the Form. Form I-752 can be filed at any time. If a couple fails to file the petition within the required 90-day period preceding the second anniversary or fails, unless good cause is shown, to appear for the interview, lawful immigration status will be terminated and the alien spouse (and children, if they entered the United States based upon the marriage) will become deportable.

Any individual convicted of the felony of knowingly marrying for the purpose of "evading any provision of the immigration laws" can be imprisoned for up to 5 years and fined up to $250,000, or both.

13.11 ABSENCE FROM THE UNITED STATES

13.11.1 Absence of under 1 year

If the immigrant alien travels outside the United States and returns within 1 year, and if the alien has not abandoned his or her U.S. residence, the alien may be readmitted to the United States by presenting the Alien Registration Receipt Card to the immigration inspector at the port of entry, provided he or she is otherwise eligible for admission. [8 CFR 211.1(b)(1)]

13.11.2 Absence of 1 year to 2 years

If an immigrant alien plans to be outside the United States for more than 1 year but less than 2 years, the alien should apply to INS on Form I-131 for a reentry permit. Application must be made while the alien is physically present in the United States, preferably at least 30 days before the proposed date of departure from the United States. [8 CFR 223] A reentry permit is valid for a period of 2 years from the date of issuance and cannot be renewed, although there is no prohibition from applying for another reentry permit at that time. [8 CFR 223.2] Some foreign countries may accept a reentry permit in lieu of a passport if the immigrant is unable or unwilling to obtain a valid passport from the country of his or her citizenship. Immigrants planning to be away from the United States for more than 2 years will have to make special efforts to document their intent to reside in the United States permanently to avoid loss of permanent residence.

13.11.3 Travel prohibition to certain countries

Immigrants have the same privileges as U.S. citizens with regard to travel abroad. When there is a Department of State ban on travel to a certain country (e.g., Lebanon in 1988), the ban extends to immigrants as well as U.S. citizens.

13.12 NATURALIZATION

An immigrant alien is not required to become a U.S. citizen at any time, and an immigrant may retain U.S. permanent-resident status and foreign citizenship for an indefinite length of time. However, if the alien elects to apply for naturalization, he or she is eligible to do so only after having lived in the United States as a permanent resident for a period of at least 5 years (or a period of 3 years if the immigrant has been married to a U.S. citizen for 3 years). Forms for applying for naturalization are available from INS.

In many instances, an alien will lose citizenship in a foreign country when he or she becomes naturalized as a U.S. citizen, but this is not always the case. Aliens who wish to retain dual citizenship should consult with officials of their country of initial citizenship.

13.13 UNFAIR IMMIGRATION EMPLOYMENT PRACTICES

The Act prohibits employers from discriminating on the basis of a person's national origin or citizenship status. [Act 274B(a)] An example of discrimination based on citizenship status is an employer's refusal to hire any applicant who fails to present a U.S. passport.

These antidiscrimination provisions protect U.S. citizens and nationals and permanent residents, refugees, and those granted political asylum. It does not protect those permanent residents who fail to apply for naturalization within 6 months of the date of their eligibility. [Act 274B(a)(3)] Permanent residents who are not protected under these provisions may be protected under equal employment opportunity laws against discrimination based on ethnic origin.

Permanent residents are no longer required to file a declaration of intending citizen in order to be protected under the above-mentioned antidiscrimination provisions.

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SECTION 14

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14.1 INTRODUCTION

This section deals with a variety of topics that may be of interest to foreign student advisers. It considers certain technical aspects of immigration law and procedure that, although not within the usual routine of international educators, should be reviewed, since the foreign student adviser often serves as a campus and community resource on immigration matters.

Among the topics covered in this section are definitions of terms, procedures that may be used when seeking review of adverse INS or Department of State decisions, deportation and exclusion, refugee and asylum status, extended voluntary departure, stateside processing, legalization, and employer sanctions.

14.2 DEFINITIONS

14.2.1 Inspection

The process wherein INS personnel at ports of entry examine aliens' documents and question them to determine whether, under pertinent laws and regulations, they qualify to be admitted.

14.2.2 Admission

Legal entry into the United States, following inspection by an immigration officer at a port of entry.

14.2.3 Deferred inspection

A procedure wherein an alien's inspection and admission are postponed and referred to an INS district office. Deferred inspection is used when the inspector has serious questions about the alien's admissibility, for example, when the alien has documents that seem incompatible with each other or with the alien's spoken intentions. Under deferred inspection, the alien is given a Form I-546 and ordered to report to a designated INS office by a specified time, usually within 15 days. This procedure is different from the issuance of a Form I-515, Notice to Student or Exchange Visitor. The Form I-515 is issued when the alien is missing the Form I-20 or the Form IAP-66 and can convince the INS inspector that there is a good reason (e.g., lost forms, error, or a postal strike) for not having the form. Such aliens are admitted to the United States and given 30 days to carry or mail the proper form to the INS district office having jurisdiction over their place of residence.

14.2.4 Exclusion

The act of denying admission to the United States to an alien for reasons set forth in section 212 of the Act. The many grounds for exclusion given in the Act include past convictions for criminal acts, misrepresentations made in applying for a visa, certain types of illness, and membership in a communist party. Waivers of excludability can be and frequently are granted. [8 CFR 212] Communist party members entering as nonimmigrants are no longer inadmissible. Waivers are also available for other grounds that might be pertinent to students and scholars (e.g., some criminal convictions and health conditions).

14.2.5 Parole

Allowing into the United States an alien who might not be eligible for admission in any other way. At its discretion, INS may "parole in" an alien who, for example, is not admissible in any regular nonimmigrant category. An alien who is paroled into the United States and whose parole status expires or is terminated is subject to exclusion (as if entry had never been made) as opposed to deportation procedures.

INS can grant "advance parole" to an alien who has applied for adjustment of status, whose application is still in process, and who has urgent reason for going abroad (see Section 13.7.4).

14.2.6 Deportation

The act of effecting an alien's involuntary departure from the United States for reasons set forth in section 241(a) of the Act. The grounds for deportation are not only similar in many respects to the grounds for exclusion (e.g., criminal acts, misrepresentations, membership in a communist party, subversive activities), but in fact incorporate the grounds for exclusion as a reason for deportation if an individual was excludable at the time of entry. [Act 241(a)(1)] Aliens who overstay, engage in unauthorized employment, fail to maintain a valid passport, or fail to report changes of address within 10 days are subject to deportation. [Act 241(a)(1 and 3)] See Section 14.4 for more complete information concerning the grounds for and process of deportation.

14.2.7 Private bill

Congressional legislation that would exempt an individual from one or more of the requirements of the immigration and nationality laws or would confer a benefit for which the alien would not otherwise be eligible under those laws. Most of these bills are introduced to confer permanent residence on aliens who came to the United States as nonimmigrants but who are no longer in lawful nonimmigrant status. Introduction of a private bill in the House of Representatives does not, in practice, stay any deportation action unless the Immigration Subcommittee requests a report on the case from INS; introduction of a private bill in the Senate does stay such action. A private bill relieving an exchange visitor (J-1 or J-2) of the 2-year foreign-residence requirement under Act 212(e) has never been enacted. Under congressional committee rules, a private bill is to be considered in either house only where all relief has been sought and denied by relevant government agencies and where exigent humanitarian circumstances or the national interest is involved. This form of relief is indeed extraordinary.

14.3 APPEALS AND RECONSIDERATION

14.3.1 General discussion

An alien may be faced with denial of a visa, entry to the United States, or postentry benefit. These denials may be based on a failure to prove qualification for visa or status, inappropriate or incomplete documentation, failure to meet procedural requirements, or other reasons.

The first avenue of recourse is usually to seek review of the decision on an informal or, where allowed, formal basis by the official who made the decision. "Reopening" is based on new facts. Reconsideration is based on an argument that the decision is inconsistent with the Act, regulations, operating procedures, policies, or precedent decisions. A motion to an INS officer must be filed within 30 days of the decision. A motion to the Board of Immigration Appeals (BIA) must be filed within 20 days of its decision.

In certain instances, a formal appeal may be made from the decision of an INS official to a higher-level office of INS (Administrative Appeals Unit) or to the Board of Immigration Appeals (BIA). In other instances, the regulations expressly state that there is no appeal from an INS denial. In such instances, action by a motion to reopen or reconsider a decision is the sole avenue of recourse.

14.3.2 Avenues of recourse from adverse decisions

14.3.2.1 Review of the denial of a nonimmigrant visa at an American embassy or consulate

Prospective foreign students and scholars sometimes have difficulty in obtaining visas. Reasons for denial of a visa include lack of proper documentation (such as the Form I-20 or evidence of financial support), suspected excludability (such as criminal activity), or, most often, the aliens' inability to convince the consular officer that they will return to their home countries after completing the proposed educational activity.

Visa issuance decisions are made by State Department consuls at U.S. embassies or consulates abroad. INS personnel are generally not involved in these matters. By statute, a consular official has absolute authority to determine the facts that will govern the issuance of a visa and the applicant has no statutory or constitutional right to review or appeal. [Act 104(a) and 221] The constitutional and due process protections that individuals, including aliens, enjoy within the United States do not apply to aliens applying for visas. Nevertheless, the regulations allow for informal review of a consular officer's adverse determination. [22 CFR 41.121] An alien who is denied a visa must be advised of the specific reasons for the denial and given an opportunity to present evidence to overcome the stated objections. Applicants can reapply for a visa. The principal consular officer at the post, or his or her delegate, may review the denial in certain instances and either grant or deny the visa or refer the matter to the Visa Office of the

Department of State for an advisory opinion. The regulations provide that the Visa Office itself may initiate the review. [22 CFR 41.121(d)] In practice, this will happen only if the applicant or an interested party, such as a foreign student adviser, requests a review by the Visa Office. The Visa Office's opinion binds the consular officer only with respect to interpretations of law, not to application of the law to the facts of a given case. To the extent a request for review of an adverse decision can be framed as a legal, rather than factual, argument, it is more likely to be entertained by the Visa Office and to have greater weight in the consular official's decision. The use of congressional intervention is usually unproductive and can even prove counterproductive. A school official who has information or a point of view that might help overcome a denial can convey that information to the consular post by mail or telephone.

14.3.2.2 Review of denial of entry at a port of entry

Possession of a nonimmigrant visa does not guarantee an alien's admission to the United States. The question of eligibility to enter the United States may be considered anew at the port of entry. [Act 235 and 236] If the inspecting officer believes the alien is inadmissible to the United States, the alien may request a hearing before an immigration judge, who will rule on the alien's admissibility. If, however, the alien is ruled excludable (see Section 14.2.4) at such a hearing (or upon appeal to the BIA), the alien will be statutorily barred from entry into the United States for 1 year. Either the alien or INS may appeal the judge's decision to the BIA. [8 CFR 236.7] Judicial review in a federal district court is also available in case of an adverse decision by the BIA.

If certain documents are lacking, the immigration officer at the port of entry may grant the alien deferred inspection (see Section 14.2.3). The INS official at the port of entry or the immigration judge at the hearing may allow the alien to "withdraw" from attempting to enter the United States. Where the alien has made statements inconsistent with the status sought at entry (e.g., indications of immigrant intent by someone seeking F-1 status), it may be advisable for the individual to withdraw his or her application for the entry rather than risk the issuance of an exclusion order by an immigration judge. In such cases, legal advice may be desirable.

14.3.2.3 Extensions of stay

Applications for extension of stay are filed at INS service centers (see Section 12.3.2). Neither the statute nor the regulations provide for an appeal from denial of these applications. The applicant's only formal avenue for review is by means of a motion to reopen or a motion for reconsideration filed within 30 days of the denial decision. Failure to file timely a motion to reopen may be excused where it is demonstrated that the delay was reasonable and was beyond control of the applicant or petitioner. The motion is submitted on Form I-290A. It may have a supporting brief and documentation from the foreign student adviser. A fee is required (see Appendix 1).

The denial notice will give the reasons for the denial. Motions to reopen should be based on new factual evidence not presented earlier. Motions to reconsider are normally based on the interpretation of legal decisions and precedent rulings that have some bearing on the case at hand. [8 CFR 103.5]

The filing of a motion to reopen or reconsider does not automatically serve to stay the execution of any decision made in the case or to extend a previously set departure date [8 CFR 103.5], whereas the filing of an appeal, where one is available, does serve to postpone such actions. Some INS offices will withhold action against an alien who has filed a motion to reopen or reconsider.

14.3.2.4 Petitions for certain nonimmigrant and immigrant classifications

As noted in Sections 10 and 12, aliens may not be classified as temporary workers (H-1, H-2, and H-3), fiancées or fiancés of American citizens (K-1), intracompany transferees (L-1), extraordinary-ability aliens (O-1 and O-2), internationally recognized athletes or members of internationally recognized entertainment groups (P), or international cultural exchange aliens (Q) in the absence of an approved nonimmigrant visa petition. Similarly, immigration based on family relationships or permanent job offers in the United States requires INS approval of an immigrant visa petition. Such petitions are considered by a service center director. Only a relative petition submitted with a section 245 adjustment application is considered by a district director. Adverse decisions often may be appealed, in some instances to the INS Administrative Appeals Unit (AAU) and in other instances to the BIA. A section 245 application denied by INS may be renewed before an immigration judge in deportation proceedings.

Denials of petitions for eligibility under the H, K, L, O, P, and Q nonimmigrant classifications and the employment preference immigrant classifications are appealed to the AAU, which is a centralized INS appellate authority designed to ensure consistency in the interpretation of law and regulations among INS offices. Appeals must be filed on Form I-290B (Notice of Appeal), together with a filing fee, within 30 days of the date of the denial. A legal brief (if any) in support of an appeal must be filed with the appeal. If a brief is submitted, the Form I-290B is filed with the appropriate service center director or district director, as indicated on the denial decision on Form I-292; either director may choose to treat the appeal as a motion to reopen or reconsider and may reverse the decision without referring the matter to the AAU. Oral arguments before the AAU may be requested when filing the notice of appeal. [8 CFR 103.3(c)] It is unusual for such a request to be granted. The AAU exercises a broad scope of review and may uphold an INS decision on a basis other than that upon which the denial was founded or even considered at a lower level.

Denial decisions on petitions for immigrant categories based on family relationships with U.S. citizens or permanent-resident aliens are appealable to the BIA, the "supreme court" of immigration review. An appeal to the BIA is made by filing Form EOIR 29 with a filing fee (see Appendix 1) within 15 days. The BIA will consider a case before it de novo, that is, it will consider anew both the facts and applicable law. Appeal to the BIA from the decision of an immigration judge is made on Form EOIR 26.

14.3.2.5 Change of nonimmigrant classification

The following classes are ineligible for change in nonimmigrant classification: TWOV (transit without visa); visitor admitted under Visa Waiver Program; C; D; K; J-1 to receive graduate medical education; and J-1 subject to the 2-year home-country residence requirement, except for change to A or G. Denial of an application to change from one nonimmigrant classification to another may not be appealed to a higher body. [8 CFR 248.3(g)] However, a motion to reopen or reconsider may be submitted to the office that denied the application. There is a 30-day time limit on filing a motion to reopen or reconsider, and a filing fee (see Appendix 1) must be included with the motion.

14.3.2.6 Certification

Certification is a process by which a district director or a service center director may ask a higher-level INS authority (usually AAU or BIA) to review a decision the director has made. The district director or service center director may choose to certify a decision even if the applicant has no right of appeal. Generally, an INS official will certify a decision only when the decision involves an unusually novel or complex issue of law or fact. [8 CFR 103.4] When a case has been certified, the alien or other party affected will be given an opportunity to submit a brief on the issues presented.

14.4 DEPORTATION

14.4.1 General discussion

This section describes the provisions of law related to deportation from the United States, especially those grounds of deportability likely to be of concern to foreign students and scholars.

Particular care should be taken in responding to students' inquiries concerning deportability, as the issues presented frequently involve highly technical interpretations not only of the Act itself, but also of state criminal statutes and statutes involving such subjects as marriage and divorce. Moreover, deportation has a particular legal meaning and particular interpretations. For example, not every alien who is subject to deportation is actually deported. An alien can be deported only after a formal hearing conducted in accordance with certain procedural requirements before an immigration judge. Usually, a deportable alien will be permitted by immigration authorities to leave the United States voluntarily, without the institution of formal deportation proceedings.

In addition, the concept of deportation should not be confused with that of exclusion, although the two sometimes overlap. Deportation involves the expulsion of aliens who have entered the United States. Exclusion, on the other hand, involves denying an alien legal admission into the country.

The following information, therefore, is intended only as an introduction to the topic of deportation.

14.4.2 Grounds for deportation

14.4.2.1 Failure to comply with conditions of nonimmigrant status

Because all nonimmigrants are admitted on a temporary basis for the purpose of accomplishing a particular objective, an alien's failure to leave after the objective has been accomplished may result in a finding of deportability. [Act 241(a)(1)] A student's acceptance of unauthorized employment, failure to be a full-time student, or failure to obtain timely extensions of stay are violations of the conditions upon which the student is permitted to remain in the United States. A nonimmigrant's willful failure to provide full and truthful information requested by INS (regardless of whether the information was material) constitutes a failure to maintain nonimmigrant status. [8 CFR 214.1(f)] Also, a nonimmigrant's conviction in the United States for a crime of violence for which a sentence of more than 1 year of imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status. [8 CFR 214.1(g)]

A failure to maintain status subjects a nonimmigrant to deportation, but immigration officials do not always institute deportation proceedings under such circumstances. Furthermore, INS may reinstate the alien to nonimmigrant status (see Section 4.10) provided the violations do not continue, particularly if the violations were not substantive or willful and are excusable.

14.4.2.2 Conviction of crime after entry

Any alien is subject to deportation for the conviction of certain offenses committed after his or her entry into the United States. Generally, conviction for those crimes described as involving moral turpitude or conviction for drug-related offenses can render an alien deportable.

An alien convicted after entry of only one crime involving moral turpitude is not deportable unless the crime was committed within 5 years of entry and results in sentence to confinement for a year or more. However, an alien convicted of two separately planned and executed crimes involving moral turpitude may be deported no matter how long after entry the crimes are committed and without regard to the severity of the sentence. The felony/misdemeanor distinction is not relevant in either instance. Of particular importance is conviction of mere possession of more than 30 grams of marijuana. Though such an offense may not be viewed as serious in other circumstances, it may have dire consequences for the alien and is a deportable offense, no matter how long the alien may have lived in the United States and no matter how long after arrival the crime was committed. Although there are ameliorative provisions in the Act by which an alien convicted of many serious crimes may avoid deportation, there are virtually none for the alien convicted of a narcotics offense (other than a single offense involving possession for one's own use of 30 grams or less of marijuana), no matter how minimal the offense might seem to be. (See Section 14.4.4, Relief from deportation.)

Conviction of crimes other than those involving moral turpitude or narcotics may, in certain limited circumstances, render a nonimmigrant deportable. For example, serving a sentence for a crime, regardless of its particular nature, may prevent a foreign student from attending classes and thereby result indirectly in a finding that the student has failed to comply with one of the conditions of admission. Thus, it is the failure to comply with the conditions of the nonimmigrant status rather than commission of the crime that can lead to a finding of deportability. Otherwise, commission of relatively minor crimes will not ordinarily affect the duration of a nonimmigrant's stay.

Important legal concepts and interpretations are involved with respect to the meaning of such terms as "moral turpitude," determination of when an alien made an entry, what constitutes a conviction, the effect of state or federal statutes permitting the expunging of criminal convictions, and provisions for relief from actual deportation. For example, murder, rape, and larceny (grand or petty) are obvious examples of moral turpitude, while less obvious ones such as false statements and writing checks not covered by sufficient funds possibly may not involve moral turpitude. It is extremely important that the foreign student have competent legal advice.

14.4.2.3 Other grounds for deportation

Some other grounds of deportability, briefly described, are as follows:

1. Unlawful entry. Many aliens manage to enter the United States even though they are not legally entitled to do so. When illegal entry is discovered, the alien may be deported. Examples are aliens who enter surreptitiously and avoid inspection by immigration officers; those who gain entry by fraudulently misrepresenting or concealing facts that might otherwise have prohibited their admission; those who enter without valid documents, for example, with an invalid visa or labor certification; those who have been convicted of certain crimes prior to their arrival; aliens having certain communicable diseases or physical or mental disorders; aliens who left the United States to avoid military service; and aliens who have previously been deported and do not have permission to return. [Act 241(a)(1) and 212(a)]

2. Membership in a communist party or other proscribed organization before entry. [Act 241(a)(1), and 212(a)(3)]

3. Under limited circumstances, becoming a public charge within 5 years after entry. [Act 241(a)(5)]

4. Being a narcotic-drug addict. Although this provision is rarely enforced, an alien may be deported upon a finding that he or she is an addict, even though he or she may never have been convicted of a crime associated with narcotics. [Act 241(a)(2)]

5. Assisting or encouraging other aliens to enter the United States illegally. [Act 241(a)(1), and 212(a)(6)]

14.4.3 Deportation procedures

Deportation proceedings are instituted by issuance of a "charging document," usually entitled "Order to Show Cause and Notice of Hearing." The document is designed to notify the alien of the grounds on which INS believes he or she is deportable and to advise the alien of the time and place of the deportation hearing. Additional grounds of deportability may be charged before or during the hearing. [Act 242; 8 CFR 242]

The hearing itself is subject to the constitutional requirement for a fair hearing, meaning that the alien has the right to representation of counsel (although not at government expense), the right to cross-examine witnesses, the right to present evidence in his or her own behalf, and certain other procedural rights.

It is important for foreign students and scholars to know also that they have certain rights prior to the hearing itself. For example, they have the protection of the Fourth Amendment's prohibition against unreasonable searches and seizures (although the ruling in Matter of Sandoval, 17 I&N 70, 1979, permits INS to use evidence found in an unreasonable search in a deportation hearing). In the opinion of some lawyers, aliens need not answer the questions of an immigration officer (although in certain circumstances they may be taken into custody for refusing to answer such questions), and they may have a lawyer present at all stages of the investigatory process.

The deportation hearing is conducted by an immigration judge (formerly called a special inquiry officer). The judge's determination of deportability, as well as issues involving relief from deportation (see Section 14.4.4), are appealable to BIA. And, in certain circumstances, an adverse ruling by the Board may be reviewed in the United States Court of Appeals. [Act 106(a)]

14.4.4 Relief from deportation

As a part of the deportation hearing itself, an alien found to be deportable may avoid the impact of actual deportation by qualifying for certain ameliorative provisions of the law. [8 CFR 242.17] Deportable aliens may be granted adjustment of status [Act 245]; suspension of deportation [Act 244], which is another way of acquiring permanent residence for certain aliens who have been physically present in the United States for a continuous period of 7 years and whose deportation would result in extreme hardship to the alien or to certain members of the alien's family (the required period is extended to 10 years in some circumstances); registry [Act 249], a method of acquiring permanent residence for aliens who have lived in the United States legally or illegally since prior to 1 January 1972; and section 212(c) of the Act, which has been construed to provide discretionary relief from deportation for aliens who have been lawful permanent residents for at least 7 years.

An immigration judge may withhold the deportation of an alien on a temporary basis if, in the judge's opinion, the alien would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion in the country to which the alien's deportation has been ordered. [Act 243(h); United Nations Convention Relating to the Status of Refugees] A request for asylum may be made to the immigration judge even if a prior application for asylum has been denied.

Finally, if no other relief from deportation is available, the immigration judge may, in most cases, grant the alien the privilege of voluntary departure, in lieu of being deported. Although voluntary departure is really a forced departure, it permits the alien to avoid the stigma associated with being deported. Voluntary departure is also preferable for a more practical reason. An alien who is deported is ineligible for readmission to the United States within 5 years (20 years in the case of an alien convicted of an aggravated felony) unless he or she first secures INS permission to return. There is no such restriction on the alien who chooses voluntary departure. Furthermore, an alien under voluntary departure has the additional advantage of being able to request delays of the departure date (for substantial reasons). To be eligible for voluntary departure, the alien must be of good moral character and be able to pay the fare home.

14.5 TECHNICAL MATTERS

14.5.1 Waiver of grounds of inadmissibility under section 212(d)(3) of the Act

For foreign students or scholars coming temporarily to the United States as nonimmigrants and who are or were members of a communist party or affiliated organization, a waiver of inadmissibility is no longer required because such people are no longer excludable from the United States.

Section 212(a) of the Act contains nine paragraphs with numerous subparagraphs listing the grounds on which an alien is considered to be ineligible for a visa or for admission to the United States. Section 212(d)(3)(A) of the Act provides that the attorney general, upon a favorable recommendation from the secretary of state, may declare that the alien will be admitted temporarily as a nonimmigrant in spite of his or her inadmissibility. This waiver of grounds of inadmissibility for temporary entry is indicated on the nonimmigrant alien's visa and Form I-94 by the notation "212(d)(3)(A)(2)," which means that the waiver under section 212(d)(3)(A) was granted for a condition existing under section 212(a)(2) having to do with criminal and related grounds. When this notation appears on a visa valid for one entry, the nonimmigrant alien must secure another waiver of grounds of inadmissibility in order to reenter the United States after a temporary departure. The foreign student adviser can assist such an alien by consulting the consul or the Visa Office of the Department of State in advance of the temporary departure to arrange for the preauthorization of the waiver and issuance of the visa.

Most of the grounds of inadmissibility can be waived for nonimmigrants. [Act 212(d)(3)]

14.5.2 SPLEX and CHINEX

Advisers will sometimes find the designation "SPLEX" written on a nonimmigrant's visa and Form I-94. Standing for Special Exchange Program, that designation once referred to nonimmigrants from former Soviet-bloc countries who came to the United States under special exchange agreements negotiated with those countries. At one time all nationals of former Soviet-bloc countries who came to the United States for educational or cultural exchange purposes were designated SPLEX.

Today, only citizens of Eastern European countries and the former Soviet Union who are in "sensitive" science and technology areas may carry documents with the SPLEX notation. ("Sensitive" science and technology fields are certified by the Committee on Exchanges, a working group composed of representatives from U.S. government agencies concerned with technology-transfer issues. Periodically the committee updates and amends the list which is distributed to consular posts abroad.) The SPLEX notation prevents these individuals from changing nonimmigrant status, transferring institutions, or extending their stays without prior permission from the State Department. An adviser assisting a SPLEX alien in obtaining a change of status, school transfer, or extension of stay should, in addition to the usual procedures described in the appropriate sections of the *Manual*, write to the Office of Independent States and Commonwealth Affairs (formerly the Office of Soviet Union Affairs) or the Office of Eastern Europe Affairs, Department of State, Washington, D.C. 20520, explaining the purpose of the desired transaction. Copies of all immigration documents, e.g., Form IAP-66 or Form I-539, related to the action being taken on behalf of student or scholar should be included. In addition, it is often helpful to include a letter from the participant's academic department outlining the program objective. As a general rule, advisers should allow 20 working days for the State Department to review the authorization request. If the Department of State has no objection to the transaction, within approximately 20 working days the desk officer will provide a letter to that effect. The letter must be submitted to INS along with the documents required for a change of status, school transfer, or extension of stay.

Some students and scholars from the People's Republic of China have the designation "CHINEX" on their visas and Forms I-94. That designation formerly had the same significance to advisers as SPLEX, but it no longer does. Advisers can disregard the CHINEX notation.

14.6 REFUGEES AND ASYLUM APPLICANTS

14.6.1 General discussion

The following sections discuss those provisions of the Refugee Act of 1980 most likely to be relevant to foreign students and scholars in the United States.

14.6.2 Definition of refugee

According to section 101 (a)(42) of the Act, the term "refugee" means any person "who is unable or unwilling to return [to his or her country of nationality or country of habitual residence] ... because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

14.6.2.1 Restrictions

Section 101(a)(42)(B) of the Act prohibits the granting of refugee status to any person who has engaged in the persecution of others. Any person deemed "firmly resettled" in a third country (e.g., having status allowing him or her to enjoy permanent residence, rights, and privileges of citizens in that third country) is also denied refugee status. [Act 207(c)(1); 8 CFR 207.1(b)]

14.6.2.2 Distinction between refugees and asylum applicants

The law clearly differentiates between refugees and asylum applicants. The term "refugee" refers to aliens outside the United States (usually in a third country, but in special circumstances they may still be located in the country of nationality and persecution). [Act 207] Section 208 of the Act refers to aliens in the United States or at a port of entry as "asylum applicants" if they meet the persecution criteria described above.

14.6.2.3 Certain grounds of excludability waived

Refugees and asylum applicants are not subject to the following provisions of section 212(a) of the Act that would otherwise render them inadmissible to the United States: public charge provision (4), labor-certification requirement and prohibition against unqualified foreign medical graduates (5), and visa requirements (7). Other grounds found in section 212(a) may be waived by the attorney general for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," except for (2)(C), and (3)(A)(B)(C) and (E), relating to unlawful activity, terrorists, potential spies or saboteurs, former Nazis, and traffickers in narcotics. [Act 207(c) and 209(c)] An alien who was convicted of an aggravated felony is ineligible for asylum.

14.6.2.4 Application for refugee status

Aliens may file for refugee status with any U.S. consul. The consul will accept the application, complete initial processing, and cable the INS office having jurisdiction over the consul or post, requesting a file number and an INS officer to interview the applicant.

14.6.2.5 Application for asylum

An application for asylum is made on Form I-589, which is available at any INS office. There is need for substantive documentation of the persecution claim, consisting of documentation of political conditions in the persecuting country (in the case of some countries, the Department of State may already have sufficient documentation) and, if available, specific documentation as to why the applicant or the applicant's group would be targeted for persecution. The decision on the granting of asylum is made by the asylum officer (or immigration judge if the alien is in exclusion or deportation proceedings), but invariably an advisory opinion is sought from the Department of State. Asylum status may be terminated by the attorney general if there is a change in circumstances in the alien's country of nationality or, in the case of a stateless person, in the country in which the person last habitually resided.

On 30 March 1994 INS published a notice of proposed rulemaking that would drastically revise the asylum rules. For example, fees would be required and employment authorization would not be granted merely because the application was not frivolous. A final rule was expected in fall 1994.

14.6.3 Refugee quotas

The annual limit on the number of refugees admitted to the United States is determined in advance by the president after consultation with Congress. In section 207(b) of the Act there is provision for exceeding such limit. The number may be increased by the president as the result of his determination, after appropriate consultation, that an unforeseen emergency exists, that the admission of certain refugees is justified by grave humanitarian concerns or is otherwise in the national interest, and that their admission cannot be accomplished in accordance with the numerical limits set for the fiscal year. On the other hand, the authority of the attorney general to parole aliens into the United States who could have proceeded through the prescribed refugee application channels has been sharply limited by section 212(d)(5) of the Act, which permits such action only when there are "compelling reasons in the public interest with respect to that particular alien." The spouses and unmarried children under 21 years of age of refugees are entitled to the same admission status if they accompany or follow to join the refugee. [Act 207(c)(2)]

14.6.4 Length of time required for adjustment to permanent residence by refugee or asylee

Neither aliens who enter as refugees nor those who are granted asylum are immediately given the status of lawful permanent resident. Instead, section 209 of the Act provides for adjustment of status after 1 year's physical presence in the United States. Admission for lawful permanent residence will be recorded as of the date of the refugee's arrival in the United States. In the case of an individual granted asylum, permanent-resident status is made retroactive to a date 1 year before the approval of application for adjustment of status. The number of people granted asylum who will be permitted to adjust to permanent residence in any one fiscal year is limited to 10,000 [Act 209(b)]; this limit can result in waiting periods for these people.

14.7 EXTENDED VOLUNTARY DEPARTURE/ TEMPORARY PROTECTED STATUS

The attorney general may allow an individual alien or a category of aliens to remain in the United States for a finite or indefinite period of time through the use of the policy of "extended voluntary departure" (EVD). Although not provided for in the Act, this administrative invention has been used primarily to allow nationals of countries where there is a radical political change to remain in the United States (with employment authorization in most cases) pending clarification of conditions in the home country. Nationals of China, Poland, Afghanistan, Uganda, and Ethiopia have previously benefited under this program. Once granted, EVD may be withdrawn by INS at any time for a particular alien or for the entire category.

A new statutory basis for temporary protection from deportation of certain aliens was introduced into the law by the 1990 Act. Qualified aliens who are nationals of a foreign country designated by the Attorney General may be granted "temporary protected status" (TPS) by INS. An alien granted such status cannot be deported while such status is in effect, is entitled to work authorization, and, on request, may be given permission to travel abroad. The law expressly states that the granting of TPS "shall not be considered to be inconsistent with the granting of nonimmigrant status."

An alien desiring TPS must apply to INS and pay the required fee plus the fee for the application for work authorization. The application consists of Forms I-104, I-765, I-821, two fingerprint cards, two photos and supporting evidence.

To be eligible, the alien must be a national of a designated country, or a stateless person who last habitually resided in such a country. In addition, the alien must have been continuously physically present in the United States since the designation and must be admissible. The law grants exceptions from certain exclusion grounds and allows special discretionary waivers of other specified exclusion grounds. [Act 244A]

The attorney general may designate a country in which there is an ongoing armed conflict or in which a disaster has occurred (earthquake, flood, drought, epidemic, environmental disaster), or in which "extraordinary and temporary conditions" exist.

El Salvador was designated by the statute. Nationals of El Salvador were granted a deferral of enforced departure for the period beginning 1 July 1992 and ending 30 June 1993. [*Federal Register*, 26 June 1992, p. 28700] TPS was subsequently extended through 1994; it is expected to be withdrawn in 1995.

The following countries have been designated by the attorney general as of the date of preparation of this chapter: Lebanon, Liberia, and Somalia. TPS for nationals of Kuwait expired on 27 March 1992.

14.8 ADJUSTMENT OF STATUS TO PERMANENT RESIDENT (GENERAL)

Until 31 December 1987 the Department of State and INS cooperated in a program called "stateside processing," in which certain aliens ineligible for adjustment of status in the United States could go to consular posts in Canada or Mexico to obtain immigrant visas and reenter the United States in immigrant status. That program has been terminated because of budgetary constraints.

Under a law enacted 26 August 1994 (PL 103-317), almost all aliens, (including those who entered without inspection, violated status, remained in the United States beyond the period of their authorized stay, or entered under the visa waiver program) are eligible to apply for adjustment of status under section 245 of the Act, if otherwise eligible under that section. Except for children under the age of 17 and certain spouses and children of aliens granted temporary or permanent resident status under the amnesty provisions of section 210 or 245A of the Act or section 202 of IRCA, the applicant must pay a filing fee of 5 times the regular fee *plus* the regular fee. The applicant would also have the option of applying for a visa abroad to a U.S. consul. However, an alien applying to a consul for a visa must be abroad at least 90 days before the visa can be issued unless the alien had been maintaining a lawful nonimmigrant status at the time of departure from the United States or is the spouse or child of an alien granted temporary or permanent resident status under the Amnesty provisions. The law sunsets 30 September 1997.

Specifically, to be eligible, individuals must (1) be physically present in the United States, (2) be eligible for immigrant classification and have an immigrant visa number immediately available, (3) not be excludable from the United States under any provision of section 212(a) of the Act, unless all grounds of excludability have been waived, (4) properly file Form I-485 with the required fee, (5) properly file Supplement A to Form I-485 on or after 1 October 1994, (6) pay the additional sum of five times the fee, except in the case of family unity beneficiaries, and (7) adjust status on or after 1 October 1994 and before 1 October 1997.

14.9 LEGALIZATION

The Immigration Reform and Control Act of 1986 provided a means for aliens who had been in the United States illegally since 1 January 1982 to remain in the United States and become legal permanent residents (and eventually citizens, if they so desire). [Act 245A] A similar program (known as SAW) was available to certain aliens who engaged in agricultural field work for 90 days during the 12 months from May 1985 to May 1986. [Act 210]

The application period for the general legalization program was 6 May 1987 through 5 May 1988. Applications for the SAW program had to be filed between 1 June 1987 and 30 November 1988.

Upon qualifying, an alien applicant under the legalization or SAW provisions gained first temporary-resident status and, eventually, permanent-resident status. An individual who obtained permanent residence under any of the legalization provisions could eventually apply for citizenship.

Once an application was made, an alien could obtain permission to be employed, shown on Form I-688A, and to travel and reenter the United States. These privileges were continued if the application was eventually approved and the alien was issued Form I-688.

Aliens legalized under the general legalization program are able to apply for permanent residence after 18 months in temporary-resident status and must do so within the 24 months following the 18 months of temporary residence. [Act 245A(b)] There are additional requirements to be met in order to adjust to permanent residence. These include English-language and basic citizenship requirements similar to those for naturalization as a U.S. citizen. In addition, permanent residence gained under the general legalization provisions carries a 5-year bar on receipt of certain forms of public assistance.

14.10 EMPLOYER SANCTIONS

The following discussion of employer sanctions is intended to be a brief summary of the law and regulations. Readers wishing comprehensive guidance on the subject should refer to the statute, the regulations, and the *Handbook for Employers* discussed below.

The Immigration Reform and Control Act of 1986 contained two major provisions constituting the compromise that had eluded Congress for the previous 6 years—the legalization of aliens who were longtime residents of the United States and penalties for employers who hire, or continue to employ, aliens not authorized for employment in the United States. The latter provision affects every employer and every worker in the United States. The employer must verify employment eligibility and the employee must attest to employment eligibility. Form I-9 is used for this purpose.

Proponents of the employer sanctions provision asserted that the "magnet" that drew illegal immigrants to this country was the availability of employment. The only way to turn off the magnet, proponents argued, was to penalize employers who hired illegal aliens and to require employers to verify the employment status of prospective workers. In answer to opponents' charges that such requirements would result in discrimination against foreign-looking or foreign-sounding applicants for employment, the legislation included a provision to penalize employers who committed "unfair immigration-related employment practices" by discriminating on the basis of citizenship or national origin.

This so-called antidiscrimination provision is limited in its application and overlaps existing civil rights statutes. If Congress should find after 3 years of employer sanctions that they do result in discrimination, the finding could result in the termination of all provisions relating to employers under IRCA. Although the General Accounting Office did report that a pattern of discrimination resulted from implementation of the employer-sanctions provision, Congress chose not to terminate it.

14.10.1 Prohibitions

IRCA sets forth three principal prohibitions affecting all employers in the United States:

1. It is unlawful knowingly to hire, recruit, or refer for a fee, after 6 November 1986, an alien not authorized for employment in the United States. [Act 274A(a)(1)]

2. It is unlawful to continue to employ an alien, other than one hired before 7 November 1986, knowing that the alien was or has become unauthorized to work. [Act 274A(a)(2); 8 CFR 274a.3]

3. It is unlawful to fail to comply with requirements for verification of an employee's work authorization and identity if that employee (whether a U.S. citizen or an alien) was hired after 6 November 1986. [Act 274A(b); 8 CFR 274a.2]

14.10.2 Unlawful hiring, recruiting, or referring for a fee

If an alien not authorized for employment provides services for remuneration to any person or entity, and if the "unauthorized" status of the alien is known to the employer, the employer is subject to penalties ranging from $250 to $10,000 per unauthorized alien, depending upon certain factors. Employers who are found to engage in a "pattern or practice" of hiring aliens not authorized for employment may even be imprisoned. [Act 274A(e) and (f); 8 CFR 274a.10]

In order for a recruitment or referral to be covered by the Act, a fee must have been paid. [8 CFR 274a.1(d) and (c)] Thus, a faculty member who recruits prospective faculty at a conference is not engaging in activity covered by IRCA unless the professor is remunerated for the recruitment. The provisions on recruitment and referral for a fee were obviously aimed at employment agencies, or "headhunters." Specifically exempted from the sanctions provision are employers of domestic workers who provide sporadic, irregular, or incidental services in a private home. [8 CFR 274a.1(h)] Employment of a regular weekly household cleaning person, or an au pair, would not be exempt from employer sanctions. Utilization of an independent contractor to clean the windows of a building would not subject the building owner to employer sanctions for any cleaner not authorized to work unless the owner had knowledge of that fact.

14.10.3 Aliens authorized to work for any employer as an incident of immigration status

The following classes of aliens are authorized to work without restriction as to location or type of employment; specific employment authorization is not required: lawful permanent residents; lawful temporary residents pursuant to section 245A or 210; admitted refugees; paroled refugees; asylees; K aliens; N aliens; citizens of certain Pacific islands; aliens granted withholding of deportation under section 243(h); and aliens granted extended voluntary departure as members of designated nationality groups. However, they must present to the employer a document or documents listed on Form I-9 (Employment Eligibility Verification). [8 CFR 274a.12(a)]

14.10.4 Aliens authorized to work for a specific employer

The following classes of aliens are authorized to work only for the specific employer for whom the alien's status was granted: A-1 and A-2 employees of foreign governments; A-3 personal employees of foreign government officials; C-2 and C-3 foreign government officials in transit; E-1 and E-2 traders and investors (principals only); F-1 students for on-campus employment; F-1 students for curricular practical training; F-1 students under the pilot off-campus employment program; G-1, G-2, and G-3 representatives to designated international organizations such as the United Nations and G-4 employees of such organizations; G-5 personal employees of G-1, G-2, G-3, and G-4 aliens; H-1, H-2, and H-3 aliens; I aliens (principals only); J-1 aliens as set forth on Form IAP-66; L-1 aliens, NATO officers and employees; personal employees of NATO employees; TN employees relating to professionals under the North American Free Trade Agreement (NAFTA); O-1 O-2 aliens; P-1, P-2, and P-3 aliens; Q aliens, and R-1 aliens. They must satisfy Form I-9 requirements. [8 CFR 274a.12(b), 8 CFR 214.2(f)(10)(i)] They are not issued employment authorization documents by INS.

A J-1 alien may be employed only by the "program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency as set forth in the Certificate of Eligibility (Form IAP-66)." [8 CFR 274a.12(b)(11)] An Employment Authorization Document (EAD) is not issued to any J-1 alien by INS. [8 CFR 274a.12(b)]

In the case of a J-1 student employment permission is granted in writing by the program sponsor, usually by letter. Unfortunately, neither the regulations nor the INS *Handbook for Employers* (1991 ed.) states that the sponsor's work-permission letter constitutes employment authorization for I-9 purposes. The J-1 student may present to the employer an unexpired passport, Form I-94, and the employment permission letter from the sponsor or a copy of IAP-66 showing practical training authorized, and a copy of an INS letter to NAFSA dated 11 September 1987. The INS letter explains that these documents are acceptable for I-9 purposes. INS failed to revise 8 CFR 274a.12 as promised in its letter.

14.10.5 Aliens who must apply to INS for employment authorization

The following classes of aliens must apply to INS on Form I-765 to obtain employment authorization: A-1 or A-2 spouses or dependents of foreign government officials; certain B-1 aliens such as domestic employees of specified nonimmigrants (B, E, F, H, I, J, L, TN); spouses or dependents of E-1 employees of the Coordination Council of North American Affairs; F-1 students for optional practical training; F-1 students sponsored by designated international organizations such as the United Nations; F-1 students seeking employment based on severe economic hardship; G-1, G-3, or G-4 spouses or dependents; J-2 aliens; M-1 students for practical training; dependents of aliens with NATO classification; asylum applicants; section 245 or 249 permanent-resident applicants; section 244 suspension applicants; parolees and refugees; aliens granted voluntary departure under 8 CFR 242.5(a)(2)(v)(vi) or (viii); aliens in exclusion or deportation proceedings; aliens granted deferred action status for administrative convenience; aliens granted temporary protected status; and aliens under an order of supervision under section 242(d). Information concerning fees and supporting documents is set forth on Form I-765. [8 CFR 274a.12(c)]

In the cases of aliens applying for an EAD from INS (as distinguished from applying for extension of stay to continue employment as an A-3, E, G-5, H-1, H-2, H-3, I, J-1, L-1, or TN alien) the application is submitted on Form I-765. [8 CFR 274a.13] Applications for an EAD are filed with the local INS office or with the appropriate service center, depending on the applicant's category. F-1 and J-2 aliens file with the local INS office. The place of filing for all categories and the required supporting documentation are set forth on "Form I-765 Instructions Supplement (11 March 1993)" as an attachment to INS Headquarters memo (CO 1644) of 6 April 1993.

The fee, and any required supporting documents, as specified, must be submitted with the application. Some local INS offices require in-person filing, as the applicant must be photographed by INS. Other local offices allow the application to be mailed and schedule an appointment for issuing the EAD. The alien may not commence employment until the EAD is issued. If the application is not adjudicated in 90 days, an interim employment authorization document will be granted with validity up to 240 days. However, notification of a denial decision automatically terminates the interim employment authorization. [8 CFR 274a.13(d)]

14.10.6 Continuing employment

Employers are not subject to penalties if they continue to employ an alien who lacks employment authorization but who was hired before 7 November 1986. [8 CFR 274a.7] These employees do not lose their "grandfathered" status even if, subsequent to 6 November 1986, they take a leave of absence and return to work, as long as the absence was for study, illness, or pregnancy; if they are transferred to another location for the same employer; or under certain other conditions. [8 CFR 274a.2(b)(1)(viii)] The employment of aliens hired after the grandfathering date and whose authorization for that employment expires or whose unauthorized status is discovered by an employer must be terminated, or the employer risks penalties. [8 CFR 274a.2(b)(1)(vii) and 274a.3]

An exception to the rule requiring unexpired employment authorization exists for certain categories of aliens seeking extension of stay. The exception allows employers to continue employing an alien who (1) is in A-3, E, G-5, H-1, H-2, H-3, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R-1, or TN status; (2) has filed in a timely manner a application for extension of stay with the same employer; and (3) has not yet received a decision on the application for extension.

Under these conditions, the alien is considered authorized for employment for a period of up to 240 days beyond the expiration of status, and an employer is neither penalized nor required to document extended employment authorization. [8 CFR 274a.12(b)(15)] However, if the extension is denied during the 240-day period, employment must terminate.

14.10.7 Knowledge requirement

Actual or constructive knowledge of an alien's unauthorized status is required for the employer to be deemed in violation. If INS informs the employer after an I-9 check that the A number shown on the form does not relate to the alien, the employer has constructive knowledge.

14.10.8 Employment verification

Employers must verify, by examining certain documents, the individual's work authorization and identity, and attest, under penalty of perjury, to such verification on the Form I-9. [Act 274A(b)] The employee also attests, under penalty of perjury, as to his or her status as a U.S. citizen or as an alien authorized for that particular employment at that time. Regulations provide for a variety of documents that may be presented to verify status, some providing both identity and employment authorization and some providing either one or the other. [8 CFR 274a.2(b)(1)]

Employers must verify the status of all employees, citizens and aliens alike. The documents examined must reasonably appear on their face to be genuine. [*Handbook for Employers*, M-274, p. 3] Regulations also point out the type of employment for which each class of alien is authorized. [8 CFR 274a.12] For example, a U.S. citizen or resident alien is not limited as to the type or duration of employment, whereas certain other classes of aliens have specific regulatory restrictions as to the kind of employment, the employer, or the duration of employment. For example, an H-1B temporary worker has employer-specific authorization, while a J-2 exchange-visitor dependent who is authorized for employment is not restricted to a particular employer.

The verification process must be completed no later than 3 business days after the individual begins providing services, except where the employment is for a period of less than 3 days, in which case verification must be completed at the time of the hire. [8 CFR 274a.2(b)(1)(ii) and (iii)] Regulations provide for exceptions where an original document has been lost and application has been made for a duplicate, and in other circumstances. [8 CFR 274a.2(b)(1)(vi)]

Once completed, the Form I-9 and any copies made of documents examined to verify status must be retained for at least 3 years, or for 1 year after date of the employee's termination, whichever is later. [Act 274A(b)(3); 8 CFR 274a.2(b)(2)]

An employer's failure to review documents verifying identity and employment authorization, to complete the Form I-9, or to retain the form for the requisite period could result in fines of from $100 to $1,000 per individual. [Act 274A(e)(5); 8 CFR 274a.10]

14.10.9 Inspection of employer records

Officials of INS, the Office of Special Counsel, and the Department of Labor may, without a warrant or subpoena, demand access to an employer's records to assure compliance with the verification requirements. [Act 274A(b)(3)] An employer must provide access to the Forms I-9, and any copies of documents verifying status kept with the forms, within 3 business days of a request by these officials. [8 CFR 274a.2(b)(2)(ii)]

14.10.10 Verification as an affirmative defense

When an employer can demonstrate good-faith compliance with the verification provisions, the employer will be shielded from liability for hiring an unauthorized alien. [Act 274A(a)(3); 8 CFR 274a.4] Under certain circumstances, an employer may rely on a state employment agency's referral of an individual and verification of that individual's status. [8 CFR 274a.6]

14.10.11 Multisite employers

When an employer has distinct, physically separated subdivisions and each separately hires, recruits, or refers for a fee and is not under the common control of a central hiring authority, each site will be considered a separate employer for purposes of the employer penalties. Separate campuses of a state university system may be considered separate employers under this provision. This would lessen the possibility of such a system's being considered a multiple offender or practitioner of a pattern or practice based on a few violations at each campus.

14.10.12 Unfair immigration-related employment practices

IRCA provides for protection against discrimination in employment practices based on citizenship (or "intending citizenship") or national origin. This provision covers employers of four or more individuals only and allows an employer to prefer a U.S. citizen if the citizen and an alien are "equally qualified" [Act 274B(a)(4)] or if the preference is required by federal, state, or local law. [Act 274B(a)(2)(C)] An example of the latter would be a federal grant requiring U.S. citizenship as a prerequisite to being paid from the grant funds. To the extent that an allegation of discrimination on the basis of national origin is covered by other civil rights law provisions, the unfair immigration-related employment practice provisions do not apply. [Act 274B(a)(2)(B)] In general, the unfair employment practice provisions of IRCA are intended to penalize employers who go beyond the requirements of the verification process. Employers who verify only the status of aliens or foreign-appearing or foreign-sounding applicants will be exposed to liability under these provisions, if not under other civil rights provisions. It is generally accepted that this section of IRCA does not provide special or additional antidiscrimination protection to nonimmigrant aliens authorized to work who experience discrimination based on citizenship. Nonimmigrants may find possible remedies under equal-opportunity employment laws if the discrimination is based on national origin. Under the 1990 Immigration Act it is an unfair immigration-related employment practice to specify more or different documents than are required for employment verification on Form I-9. [Act 274B(a)(6)]

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Appendixes 1-13

Updated by Gudrun E. Kendon

APPENDIX 1

Fee Schedule

Immigration and Naturalization Service Summary of Changed Fees Effective 14 July 1994

Form No.	**Form Name/Description**	**Fee**
I-17	Petition for Approval of School for Attendance by Nonimmigrant Students	$140
I-90	Application by Lawful Permanent Resident Alien for Alien Registration Card Form I-551	$75
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document	$65
I-129	Petition to Classify Nonimmigrant as a Temporary Worker Base fee: $75. Additional $80 for change of status; $50 for extension of stay; $10 for consular notification ($10 per dependent included on application)	
I-130	Petition for Alien Relative, Fiancé, or Orphan	$80
I-131	Application for Issuance of Permit to Reenter the United States	$70
I-140	Petition for Prospective Immigrant Employee	$75
I-290A	Notice of Appeal to the Board of Immigration Appeals	$110
I-290B	Notice of Appeal to Regional Commissioner	$110
I-485	Application for Permanent Residence $130 (over 14 years of age); $100 (under 14)	
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment	No Fee
I-539	Application to Extend Status/Change Nonimmigrant Status ($10 per co-applicant)	$75
I-566	Interagency Record of Individual Requesting Change/Adjustment to or from A or G Status, or Requesting A or G Dependent Employment Authorization	No fee
I-589	Request for Asylum in the United States	No fee
I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended	$95
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence Status	$80
I-765	Application for Employment Authorization (cash accepted)	$70
N-400	Application to File Petition for Naturalization	$95
N-600	Application for Certificate of Citizenship	$100
	Motion to Reopen or Reconsider Submitted to INS	$110
	Motion to Reopen or Reconsider Submitted to Immigration Judge or to Board of Immigration Appeals	$110
	Request for Classification of a Citizen of Canada to be Engaged in Business Activities pursuant to the U.S.-Canada Free Trade Agreement	$50.00

ETA-750	Application for Alien Labor Certification	No fee
ETA-9029	Health Facility Labor Attestation	No fee
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students	No fee
ETA-9035	Labor Condition Application	No fee

The payment of fee must be made in the form of a personal or cashier's check or money order made payable to the Immigration and Naturalization Service, U.S. Department of Justice. Cash will not be accepted unless otherwise noted.

The regulations provide for waiver of a fee if an applicant can demonstrate to the satisfaction of INS that he or she is unable to pay thee fee. The fee schedule should not prohibit application or requests on the basis of inability to pay. [8 CFR 103.7 (c) (1)] Requests for waivers of fee's may cause serious delays in adjudication of application and may also raise the question of financial capability. Waivers should be requested only when absolutely necessary.

APPENDIX 2

Immigration Forms

The following is a list of immigration forms that advisers can expect to see or need to identify. For a complete list of INS forms, see 8CFR 299.1.

Immigration and Naturalization Service Forms

AR-11	Change of Address Card
G-325	Biographic Information
I-9	Employment Eligibility Verification
I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students
I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students
I-20ID Copy	
I-90	Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-129	Petition to Classify Nonimmigrant as a Temporary Worker
I-130	Petition for Alien Relative, Fiancé, or Orphan
I-131	Application for Issuance of Permit to Reenter the United States
I-134	Affidavit of Support
I-140	Petition for Prospective Immigrant Employee
I-151	Alien Registration Receipt Card
I-175	Nonresident Alien Canadian Border Crossing Card
I-190	Nonresident Alien Mexican Border Crossing Card
I-193	Application for Waiver of Passport and/or Visa
I-212	Application for Permission to Reapply for Admission into the United States after Deportation or Removal
I-290A	Notice of Appeal to the Board of Immigration Appeals
I-290B	Notice of Appeal to Regional Commissioner
I-485	Application for Permanent Residence
I-515	Notice to Student or Exchange Visitor Admitted without I-20 or IAP-66
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment
I-539	Application to Extend Status/Change Nonimmigrant Status
I-566	Interagency Record of Individual Requesting Change/Adjustment to or from A or G Status, or Requesting A or G Dependent Employment Authorization
I-589	Request for Asylum in the United States
I-612	Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended

I-688	Temporary Resident Card
I-688-B	Employment Authorization Document
I-751	Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence Status
I-765	Application for Employment Authorization
I-775	Visa Waiver Pilot Program Agreement
I-791	Visa Waiver Pilot Program Information Form
I-797	Notice of Action
I-821	Temporary Protected Status Eligibility Questionnaire
N-400	Application to File Petition for Naturalization
N-600	Application for Certificate of Citizenship
OF-156	Application for Nonimmigrant Visa

United States Information Agency Forms

IAP-37	Exchange Visitor Program Application
IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status
IAP-87	Update of Information on Exchange Visitor Program Sponsor

Department of Labor Forms

ETA-750	Application for Alien Labor Certification
ETA-9029	Health Facility Labor Attestation
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students
ETA-9035	Labor Condition Application

Internal Revenue Service Form

8843	Statement for Exempt Individuals and Individuals with a Medical Condition
1040NR	Nonresident Alien Federal Income Tax Form

APPENDIX 3

Sample Forms

Immigration and Naturalization Service Forms

AR-11	Change of Address Card
I-9	Employment Eligibility Verification
I-17	Petition for Approval of School for Attendance by Nonimmigrant Alien Students
I-20A-B	Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students
I-20M-N	Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students
I-94	Arrival/Departure Record
I-102	Application by Nonimmigrant Alien for Replacement of Arrival Document
I-129	Petition to Classify Nonimmigrant as a Temporary Worker
I-130	Petition for Alien Relative, Fiancé, or Orphan
I-131	Application for Issuance of Permit to Reenter the United States
I-134	Affidavit of Support
I-140	Petition for Prospective Immigrant Employee
I-515	Notice to Student or Exchange Visitor Admitted without I-20 or IAP-66
I-538	Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment
I-539	Application to Extend Status/Change Nonimmigrant Status
I-688-B	Employment Authorization Document
I-765	Application for Employment Authorization

United States Information Agency Forms

IAP-37	Exchange Visitor Program Application
IAP-66	Certificate of Eligibility for Exchange Visitor (J-1) Status
IAP-87	Update of Information on Exchange Visitor Program Sponsor

Department of Labor Forms

ETA-750	Application for Alien Labor Certification
ETA-9029	Health Facility Labor Attestation
ETA-9034	Attestation by Employers for Off-campus Work Authorization for F-1 Students
ETA-9035	Labor Condition Application

Internal Revenue Service Form

8843	Statement for Exempt Individuals and Individuals with a Medical Condition

NAME (Last in CAPS) (First) (Middle)

I AM IN THE UNITED STATES AS:
☐ Visitor ☐ Permanent Resident
☐ Student ☐ Other______________
(Specify)

COUNTRY OF CITIZENSHIP

DATE OF BIRTH

COPY NUMBER FROM ALIEN CARD
A

PRESENT ADDRESS (Street or rural route) (City or Post Office) (State) (ZIP Code)

(IF ABOVE ADDRESS IS TEMPORARY) I expect to remain there _______ years _______ months

LAST ADDRESS (Street or rural route) (City or Post Office) (State) (ZIP Code)

I WORK FOR OR ATTEND SCHOOL AT: (Employer's Name or Name of School)

(Street Address or rural route) (City or Post Office) (State) (ZIP Code)

PORT OF ENTRY INTO U.S.

DATE OF ENTRY INTO U.S.

IF NOT A PERMANENT RESIDENT, MY STAY IN THE U.S. EXPIRES ON: (Date)

SIGNATURE

DATE

AR-11 (Rev. 3-21-79)N

OMB Appvd. No. 43-R0038

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0136
Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins

Print Name: Last	First	Middle Initial	Maiden Name
Address *(Street Name and Number)*		Apt. #	Date of Birth *(month/day/year)*
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A____________
☐ An alien authorized to work until ___/___/___
(Alien # or Admission #____________

Employee's Signature

Date *(month/day/year)*

Preparer and/or Translator Certification. *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature

Print Name

Address *(Street Name and Number, City, State, Zip Code)*

Date *(month/day/year)*

Section 2. Employer Review and Verification. To be completed and signed by employer. **Examine one document from List A OR examine one document from List B and one from List C** as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

	List A	OR	List B	AND	List C
Document title:	____________		____________		____________
Issuing authority:	____________		____________		____________
Document #:	____________		____________		____________
Expiration Date *(if any)*:	___/___/___		___/___/___		___/___/___
Document #:	____________				
Expiration Date *(if any)*:	___/___/___				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* ___/___/___ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).**

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address *(Street Name and Number, City, State, Zip Code)*	Date *(month/day/year)*

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name *(if applicable)*

B. Date of rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title:____________ Document #:____________ Expiration Date (if any): ___/___/___

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative

Date *(month/day/year)*

Form I-9 (Rev. 11-21-91) N

LISTS OF ACCEPTABLE DOCUMENTS

LIST A

Documents that Establish Both Identity and Employment Eligibility

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship *(INS Form N-560 or N-561)*
3. Certificate of Naturalization *(INS Form N-550 or N-570)*
4. Unexpired foreign passport, with *I-551 stamp or* attached *INS Form I-94* indicating unexpired employment authorization
5. Alien Registration Receipt Card with photograph *(INS Form I-151 or I-551)*
6. Unexpired Temporary Resident Card *(INS Form I-688)*
7. Unexpired Employment Authorization Card *(INS Form I-688A)*
8. Unexpired Reentry Permit *(INS Form I-327)*
9. Unexpired Refugee Travel Document *(INS Form I-571)*
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph *(INS Form I-688B)*

OR

LIST B

Documents that Establish Identity

1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day-care or nursery school record

AND

LIST C

Documents that Establish Employment Eligibility

1. U.S. social security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)*
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card *(INS Form I-197)*
6. ID Card for use of Resident Citizen in the United States *(INS Form I-179)*
7. Unexpired employment authorization document issued by the INS *(other than those listed under List A)*

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Petition for Approval of School for
Attendance by Nonimmigrant Students

OMB 1115-0070
Exp. 4-86

INS USE ONLY

School Code ___ ___ ___ 214F ___ ___ ___ ___

Approval for attendance of students under:
1. ☐ Section 101(a)(15)(F) of the Act
2. ☐ Section 101(a)(15)(M) of the Act
3. ☐ Both of the above sections of the Act

This request is to:
1. ☐ Create a file
2. ☐ Update a file

Fee Stamp

Date of Approval

DD

District

This section is to be COMPLETED BY THE SCHOOL - DO NOT WRITE ABOVE THIS LINE - (Please read instructions before filling in form.) If you need more space to answer fully any items on this form, use a separate sheet; identify each answer with the letter and number of the corresponding item, and sign and date each sheet.

PRESS FIRMLY - LEGIBLE COPY REQUIRED

TO THE IMMIGRATION AND NATURALIZATION SERVICE:

1. Petition is made for approval, or continuation of approval, of this institution as a school for attendance by nonimmigrant alien students under (complete as appropriate):
   a. ☐ Section 101(a)(15)(F) of the Act (academic and language students),
   b. ☐ Section 101(a)(15)(M) of the Act (vocational students),
   c. ☐ Both of the above sections of the Act, and the following statement of fact is submitted.

2. Name of school

3. Mailing address of school

4. This school is a:
   a. ☐ Public Institution (Leave No. 10 blank. Please note that no fee is required. See instruction No. 2)
   b. ☐ Private Institution (Complete No. 10).

5. This school is engaged in: (Check appropriate blocks and explain further if necessary).
   a. ☐ Primary Education
   b. ☐ High School Education (Academic or Vocational)
   c. ☐ Vocational or Technical Education (Other than High School)
   d. ☐ Language Training
   e. ☐ Higher Education (issuing one or more of the following degrees: Associate, Bachelor's, Master's, PhD)
   f. ☐ Other (identify) ______________________________

6. This school's sessions are based on:
   a. ☐ Semesters
   b. ☐ Trimesters
   c. ☐ Quarters
   d. ☐ Other (explain) ______________________________

7. Provide the date (month and day) registration begins for EACH session during a calendar year, including the summer session if your school has one. If there is no beginning registration date, please explain. If there are more than five sessions in your school, do NOT enter any information in this space, but list all beginning registration dates on a piece of paper attached to this form.
   a. ______________________
   b. ______________________
   c. ______________________
   d. ______________________
   e. ______________________

Please continue on Page 2

Form I-17 (Rev. 4-4-83) N

RECEIVED	TRANS IN	RET'D TRANS. OUT	COMPLETED

8. Date school was established

9. Location of school (if different from mailing address)

10. Name and address of owner

11. a. ☐ Petition is for initial approval. (See instruction No. 2)
b. ☐ Petition is for continuation of approval (See instructions No. 2 and 9). If for continuation, complete the following:
(i) Date of original approval ____________
(ii) INS File Number ____________

12. The school operates under the following Federal, state, local, or other authorization (If none, write "none"):

13. The school has been approved by the following national, regional, or state accrediting association or agency (If none, write "none"):

14. Nature of subject matter taught (check as many as are appropriate):
a. ☐ Liberal Arts
b. ☐ Fine Arts
c. ☐ Language
d. ☐ Religion
e. ☐ Professional Studies
f. ☐ Vocational or Technical Training
g. ☐ Other (Explain) ____________

15. List the degrees available from your school.

16. Check as appropriate and explain further if necessary:
If the school is engaged in elementary or secondary education, it ☐ does ☐ does not qualify its graduates for acceptance by accredited schools of higher educational level. ____________

If the school is engaged in higher education, it ☐ does ☐ does not confer recognized bachelor's, master's, doctor's, professional, or divinity degrees. Its credits ☐ are ☐ are not recognized by and transferable to institutions of study which confer degrees. ____________

If the school is engaged in vocational or technical education, it ☐ does ☐ does not qualify its graduates for employment in the occupations for which preparation is offered. ____________

17. Sessions are held as follows:
a. ☐ Day Only b. ☐ Night Only c. ☐ Day and Night

18. Requirements for admission:

19. Courses of study and time necessary to complete each:

20. Requirements for graduation:

21. Causes for expulsion:

22. Average annual number of
a. Classes ____________
b. Students ____________
c. Teachers or Instructors ____________
d. Non-teaching employees ____________

23. Approximate annual total cost of room, board, tuition, etc., per student $ ____________

Please continue on Page 3

If the school is approved, THE PETITIONER AGREES:

1. Upon acceptance of any nonimmigrant alien student, to furnish that student a Certificate of Eligibility (Immigration and Naturalization Service Form I-20A/B for an F-1 student or Form I-20M/N for an M-1 student).

2. To keep records containing the following specific information and documents relating to each nonimmigrant F-1 or M-1 student to whom the school issues a Form I-20A/B or I-20M/N, while the student is attending the school and until the school notifies the Service, in accordance with Immigration and Naturalization Service regulations, that the student is no longer pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least one year. If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status. The designated school official must make the following information and documents available to or furnish them to the Immigration and Naturalization Service upon request. The information and documents which the school must keep on each student are as follows:

1. The admission number from the student's Form I-20 ID copy.
2. Country of citizenship.
3. Address and telephone number in the United States.
4. Status, i.e., full-time or part-time.
5. Course load.
6. Date of commencement of studies.
7. Degree program and field of study.
8. Expected date of completion.
9. Nonimmigrant classification.
10. Termination date and reason, if known.
11. The documents which show the scholastic ability and financial status on which the student's admission to the school was based.
12. Information specified by the Service as necessary to identify the student, such as date and place of birth, and to determine the student's immigration status.

3. That in any advertisement, catalog, brochure, pamphlet, literature, or other material printed or reprinted by or for this school, any statement which may appear in that material concerning approval for attendance by nonimmigrant students must be limited solely to the following:

"This school is authorized under Federal law to enroll nonimmigrant alien students."

I CERTIFY that I am authorized to execute this petition. I understand that unless this institution fully complies with all terms as described on this form, approval may be withdrawn.

Dated at ______________________________, this ______ day of __________, 19 ____.

Signature ______________________________

Title ______________________________

(CORPORATE SEAL
OF INSTITUTION)

U.S. Department of Justice
Immigration and Naturalization Service
Please Read Instructions on Page 2

Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students

OMB No. 1115-0051

Page 1

This page must be completed and signed in the U.S. by a designated school official.

I-20 SCHOOL

1. Family Name (surname)

First (given) name (do not enter middle name)

Country of birth	Date of birth (mo./day/year)
Country of citizenship	Admission number (Complete if known)

2. School (school district) name

School official to be notified of student's arrival in U.S. (Name and Title)

School address (include zip code)

School code (including 3-digit suffix, if any) and approval date

_______________ 214F _______________ approved on _______________

For Immigration Official Use

Visa issuing post	Date Visa issued

Reinstated, extension granted to:

3. This certificate is issued to the student named above for:
(Check and fill out as appropriate)
- a. ☐ Initial attendance at this school.
- b. ☐ Continued attendance at this school.
- c. ☐ School transfer.
  Transferred from _______________
- d. ☐ Use by dependents for entering the United States.
- e. ☐ Other _______________

4. Level of education the student is pursuing or will pursue in the United States:
(check only one)

a. ☐ Primary	e. ☐ Master's
b. ☐ Secondary	f. ☐ Doctorate
c. ☐ Associate	g. ☐ Language training
d. ☐ Bachelor's	h. ☐ Other

5. The student named above has been accepted for a full course of study at this school, majoring in _______________
The student is expected to report to the school not later than (date) _______________ and complete studies not later than (date) _______________
The normal length of study is _______________

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because _______________

7. This school estimates the student's average costs for an academic term of _______ (up to 12) months to be:

a. Tuition and fees	$
b. Living expenses	$
c. Expenses of dependents	$
d. Other (specify):	$
Total	$

8. This school has information showing the following as the student's means of support, estimated for an academic term of _____ months (Use the same number of months given in item 7).

a. Student's personal funds	$
b. Funds from this school (specify type)	$
c. Funds from another source (specify type and source)	$
d. On-campus employment (if any)	$
Total	$

9. Remarks: _______________

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6). I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official | Name of school official (print or type) | Title | Date issued | Place issued (city and state)

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form. I also authorize the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status.

Signature of student | Name of student | Date

Signature of parent or guardian if student is under 18 | Name of parent/guardian (Print or type) | Address(city) | (State or province) | (Country) | (Date)

Form I-20 A-B/I-20ID (Rev 04-27-88)N

For official use only
Microfilm Index Number

Authority for collecting the information on this and related student forms is contained in 8 U.S.C. 1101 and 1184. The information solicited will be used by the Department of State and the Immigration and Naturalization Service to determine eligibility for the benefits requested.

INSTRUCTIONS TO DESIGNATED SCHOOL OFFICIALS

1. **The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.** Designated school officials should consult regulations pertaining to the issuance of Form I-20 A-B at 8 CFR 214.3 (K) before completing this form. Failure to comply with these regulations may result in the withdrawal of the school approval for attendance by foreign students by the Immigration and Naturalization Service (8 CFR 214.4).

2. **ISSUANCE OF FORM I-20 A-B.** Designated school officials may issue a Form I-20 A-B to a student who fits into one of the following categories, if the student has been accepted for full-time attendance at the institution: a) a prospective F-1 nonimmigrant student; b) an F-1 transfer student; c) an F-1 student advancing to a higher educational level at the same institution; d) an out of status student seeking reinstatement. The form may also be issued to the dependent spouse or child of an F-1 student for securing entry into the United States.

When issuing a Form I-20 A-B, designated school officials should complete the student's admission number whenever possible to ensure proper data entry and record keeping.

3. **ENDORSEMENT OF PAGE 4 FOR REENTRY.** Designated school officials may endorse page 4 of the Form I-20 A-B for reentry if the student and/or the F-2 dependents is to leave the United States temporarily. This should be done only when the information on the Form I-20 remains unchanged. If there have been substantial changes in item 4, 5, 7, or 8, a new Form I-20 A-B should be issued.

4 **REPORTING REQUIREMENT.** Designated school official should always forward the top page of the Form I-20 A-B to the INS data processing center at P.O. Box 140, London, Kentucky 40741 for data entry except when the form is issued to an F-1 student for initial entry or reentry into the United States, or for reinstatement to student status. (Requests for reinstatement should be sent to the Immigration and Naturalization Service district office having jurisdiction over the student's temporary residence in this country.)

The INS data processing center will return this top page to the issuing school for disposal after data entry and microfilming.

5. **CERTIFICATION.** Designated school officials should certify on the bottom part of page 1 of this form that the Form I-20 A-B is completed and issued in accordance with the pertinent regulations. The designated school official should remove the carbon sheet from the completed and signed Form I-20 A-B before forwarding it to the student.

6. **ADMISSION RECORDS.** Since the Immigration and Naturalization Service may request information concerning the student's immigration status for various reasons, designated school officials should retain all evidence which shows the scholastic ability and financial status on which admission was based, until the school has reported the student's termination of studies to the Immigration and Naturalization Service.

INSTRUCTIONS TO STUDENTS

1. **Student Certification.** You should read everything on this page carefully and be sure that you understand the terms and conditions concerning your admission and stay in the United States as a nonimmigrant student before you sign the student certification on the bottom part of page 1. **The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.**

2. **ADMISSION.** A nonimmigrant student may be admitted for duration of status. This means that you are authorized to stay in the United States for the entire length of time during which you are enrolled as a full-time student in an educational program and any period of authorized practical training plus sixty days. While in the United States, you must maintain a valid foreign passport unless you are exempt from passport requirements.

You may continue from one educational level to another, such as progressing from high school to a bachelor's program or a bachelor's program to a master's program, etc., simply by invoking the procedures for school transfers.

3. **SCHOOL.** For **initial** admission, you must attend the school specified on your visa. If you have a Form I-20 A-B from more than one school, it is important to have the name of the school you intend to attend specified on your visa by presenting a Form I-20 A-B from that school to the visa issuing consular officer. Failure to attend the specified school will result in the loss of your student status and subject you to deportation.

4 **REENTRY.** A nonimmigrant student may be readmitted after a temporary absence of five months or less from the United States, if the student is otherwise admissible. You may be readmitted by presenting a valid foreign passport, a valid visa, and either a new Form I-20 A-B or a page 4 of the Form I-20 A-B (the I-20 ID Copy) properly endorsed for reentry if the information on the I-20 form is current.

5. **TRANSFER.** A nonimmigrant student is permitted to transfer to a different school provided the transfer procedure is followed. To transfer school, you should first notify the school you are attending of the intent to transfer, then obtain a Form I-20 A-B from the school you intend to attend. Transfer will be effected only if you return the Form I-20 A-B to the designated school official within 15 days of beginning attendance at the new school. The designated school official will then report the transfer to the immigration and Naturalization Service.

6. **EXTENSION OF STAY.** If you cannot complete the educational program after having been in student status for longer than the anticipated length of the program plus a grace period in a single educational level, or for more than eight consecutive years, you must apply for extension of stay. An application for extension of stay on a Form I-538 should be filed with the Immigration and Naturalization Service district office having jurisdiction over your school at least 15 days but no more than 60 days before the expiration of your authorized stay.

7. **EMPLOYMENT.** As an F-1 student, you are not permitted to work off-campus or to engage in business without specific employment authorization. After your first year in F-1 student status, you may apply for employment authorization on Form I-538 based on financial needs arising after receiving student status, or the need to obtain practical training.

8. **Notice of Address.** If you move, you must submit a notice within 10 days of the change of address to the Immigration and Naturalization Service. (Form AR-11 is available at any INS office.)

9. **Arrival/Departure.** When you leave the United States, you must surrender your Form I-94 Departure Record. Please see the back side of Form I-94 for detailed instructions. You do not have to turn in the I-94 if you are visiting Canada, Mexico, or adjacent islands other than Cuba for less than 30 days.

10. **Financial Support.** You must demonstrate that you are financially able to support yourself for the entire period of stay in the United States while pursuing a full course of study. You are required to attach documentary evidence of means of support.

11. **Authorization to Release Information by School.** To comply with requests from the United States Immigration & Naturalization Service for information concerning your immigration status, you are required to give authorization to the named school to release such information from your records. The school will provide the Service your name, country of birth, current address, and any other information on a regular basis or upon request.

12. **Penalty.** To maintain your nonimmigrant student status, you must be enrolled as a full-time student at the school you are authorized to attend. You may engage in employment only when you have received permission to work. Failure to comply with these regulations will result in the loss of your student status and subject you to deportation.

U.S. Department of Justice
Immigration and Naturalization Service
Please Read Instructions on Page 2

Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students

OMB No. 1115-0051

Page 3

This page must be completed and signed in the U.S. by a designated school official.

I-20-ID (STUDENT) COPY

1.

Family Name (surname)	
First (given) name (do not enter middle name)	
Country of birth	Date of birth (mo./day/year)
Country of citizenship	Admission number (Complete if known)

For Immigration Official Use	
Visa issuing post	Date Visa issued
Reinstated, extension granted to:	

2.

School (school district) name
School official to be notified of student's arrival in U.S. (Name and Title)
School address (include zip code)
School code (including 3-digit suffix, if any) and approval date ________214F ________ approved on ________

3. This certificate is issued to the student named above for:
(Check and fill out as appropriate)
a. ☐ Initial attendance at this school.
b. ☐ Continued attendance at this school.
c. ☐ School transfer.
Transferred from ________
d. ☐ Use by dependents for entering the United States.
e. ☐ Other ________

4. Level of education the student is pursuing or will pursue in the United States:
(check only one)
a. ☐ Primary
b. ☐ Secondary
c. ☐ Associate
d. ☐ Bachelor's
e. ☐ Master's
f. ☐ Doctorate
g. ☐ Language training
h. ☐ Other

5. The student named above has been accepted for a full course of study at this school, majoring in ________
The student is expected to report to the school not later than (date) ________ and complete studies not later than (date) ________
The normal length of study is ________

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because ________

7. This school estimates the student's average costs for an academic term of ____ (up to 12) months to be:

a. Tuition and fees	$	
b. Living expenses	$	
c. Expenses of dependents	$	
d. Other (specify):	$	
Total	$	

8. This school has information showing the following as the student's means of support, estimated for an academic term of ____ months (Use the same number of months given in item 7).

a. Student's personal funds	$	
b. Funds from this school (specify type)	$	
c. Funds from another source (specify type and source)	$	
d. On-campus employment (if any)	$	
Total	$	

9. Remarks: ________

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct. I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6). I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official | Name of school official (print or type) | Title | Date issued | Place issued (city and state)

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form. I also authorize the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status.

Signature of student | Name of student | Date

Signature of parent or guardian if student is under 18 | Name of parent/guardian (Print or type) | Address(city) | (State or province) | (Country) | (Date)

Form I-20 A-B/I-20ID (Rev 04-27-88)N

For official use only
Microfilm Index Number

BEST COPY AVAILABLE

IF YOU NEED MORE INFORMATION CONCERNING YOUR F-1 NONIMMIGRANT STUDENT STATUS AND THE RELATING IMMIGRATION PROCEDURES, PLEASE CONTACT EITHER YOUR FOREIGN STUDENT ADVISOR ON CAMPUS OR A NEARBY IMMIGRATION AND NATURALIZATION SERVICE OFFICE.

THIS PAGE, WHEN PROPERLY ENDORSED, MAY BE USED FOR ENTRY OF THE SPOUSE AND CHILDREN OF AN F-1 STUDENT FOLLOWING TO JOIN THE STUDENT IN THE UNITED STATES OR FOR REENTRY OF THE STUDENT TO ATTEND THE SAME SCHOOL AFTER A TEMPORARY ABSENCE FROM THE UNITED STATES.

For reentry of the student and/or the F-2 dependents (EACH CERTIFICATION SIGNATURE IS VALID FOR ONLY ONE YEAR.)

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Signature of Designated School Official   Name of School Official (print or type)   Title   Date

Dependent spouse and children of the F-1 student who are seeking entry/reentry to the U.S.

Name family (caps) first	Date of birth	Country of birth	Relationship to the F-1 student

Student Employment Authorization and other Records

U.S. Department of Justice
Immigration and Naturalization Service

Page 1
Certificate of Eligibility for Nonimmigrant (M-1) Student Status - For Vocational Students *(OMB No. 1115-0051)*

This page must be completed and signed in the U.S. by a designated school official.

I-20M-N (SCHOOL) COPY

1. **Family name** *(surname)*:

First *(given)* **name** *(do not enter middle name)*:

Country of birth:

Date of birth (mo./day/year):

Country of citizenship:

Admission number *(complete if known)*

2. **School** *(school district)* **name:**

School official *to be notified of student's arrival in U.S. (Name and Title)*

School address *(include zip code)*

School code *(include 3-digit suffix, if any) and* **approval date**:

________ 214F ________ Approved on ________

For Immigration Only Use

Visa issuing post

Date visa issued

Reinstated, extension granted to:

3. This certificate is issued to the student named above for: *(check and fill out as appropriate)*
   - a. ☐ Initial attendance at this school.
   - b. ☐ Continued attendance at this school.
   - c. ☐ School transfer. Transferred from ________
   - d. ☐ Use by dependents for entering the United States.
   - e. ☐ Other ________

4. Level of education the student is pursuing or will pursue in the United States: *(Check only one)*
   - a. ☐ High school
   - b. ☐ Other vocational school

5. The student named above has been accepted for a full course of study at this school, majoring in ________
   The student is expected to report to the school not later than (date) ________ and complete studies not later than (date) ________ the normal length of study is

6. ☐ English proficiency is required:
   - ☐ The student has the required English proficiency.
   - ☐ The student is not yet proficient, English instructions will be given at the school.
   - ☐ English proficiency is not required because ________

7. This school estimates the student's average costs for an academic term of ______ (up to 12) months to be:
   - a. Tuition and fees $ ________
   - b. Living expenses $ ________
   - c. Expenses of dependents $ ________
   - d. Other (specify): $ ________

   Total $ ________

8. This school has information showing the following as the student's means of support, estimated for an academic term of months (Use the same number of months given in item 7).
   - a. Students personal funds $ ________
   - b. Funds from this school *(specify type)* $ ________
   - c. Funds from another source *(specify type and source)* $ ________

   Total $ ________

9. Remarks: ________

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct. I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official:	Name of designated school official & title *(print or type)*	Date and place issued *(city and state)*

11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on item 2 of this form. I also authorized the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g).

Signature of student:	Name of student *(print or type)*	Date
Signature of parent or guardian *(if student is under 18)*	Name of parent or guardian *(print or type)*	Date

Address of parent or guardian: *(street)* *(city)* *(state or province)* *(county)*

Form I-20M-N/I-20ID Copy (Rev. 5-3-90)N

For official use only
Microfilm Index Number

INSTRUCTIONS TO STUDENTS

FORM I-20M-N/120ID COPY. The first time you enter the United States, you must present a Form I-20M-N/I-20ID Copy. It will be returned to you endorsed with admission number. You must have your Form I-20-ID Copy (pages 3 and 4 of Form I-20M-N) with you at all times. You must not surrender it when you leave the United States. Failure to have it with you when you apply to reenter the United States will delay your entry into the United States. (If you lose your Form I-20ID Copy, you must request a new one, on Form I-102, from the Immigration and Naturalization Service office having jurisdiction over the school you were last authorized to attend.

ADMISSION. You must give this Form (I-20 M-N) to the American consular officer at the time you apply for a visa (unless you are exempt from visa requirements), and to immigration officer with evidence of ability to support yourself while pursuing a full course of study when you arrive in the United States. If you are exempt from visa requirements, and you are applying for admission to the United States as an M-1 student, you must give the immigration officer this form and evidence of your ability to support yo irself while pursuing a full course of study.

SCHOOL. If you are applying for entry to the United States for the first time after being issued an M-M-1 visa, you will not be admitted unless you plan to attend the school specified in that visa. If, before you enter the United States, you decide to attend another school, you will present an I-20M-N from the new school to an American consular officer to have that school specified in your visa.

EMPLOYMENT. You are not permitted to work except for practical training or to engage in business. You may apply for permission to work for practical training only after completing the educational program. Your alien spouse or child (M-2 classification) may not work in the United States.

PERIOD OF STAY. You are permitted to remain in the United States only while maintaining nonimmigrant student status. You must also maintain a valid passport. You may not stay longer than authorized on your Form I-20ID Copy unless you apply to the Immigration and Naturalization Service (on Form I-538 accompanied by my Form I-20ID Copy) for an extension, between 15 and 60 days before the date that your authorized stay expires. You may stay while the application is being processed and if it is approved, until the expiration of the extension.

SCHOOL TRANSFER. You will not be granted permission to transfer to another school within six months of the date you first become an M-1 student, unless you are unable to remain at the school to which you are first admitted due to circumstances beyond your control. If you want to transfer to another school, you must apply on Form I-538 accompanied by your Form I-20ID Copy. The application must be submitted to the Immigration and Naturalization Service office having jurisdiction over the school from which you wish to transfer. Sixty days after filing your application, you may attend the new school subject to approval or denial of your application. Your application will be denied, however, if you have not been taking a full course of study at the school you were last authorized to attend.

EDUCATIONAL OBJECTIVE. You are not permitted to change your educational objective.

REENTRY. If you want to reenter the United States as a nonimmigrant student after a temporary absence, you must be in possession of the following: (1) a valid student visa, (2) a valid passport and either a new Form I-20 M-N or your I-20ID Copy (pages 3 & 4 of the Form I-20 M-N) properly endorsed for reentry if the information on the I-20 ID Copy form is current.

NOTICE OF ADDRESS. If you move, you must submit a notice within 10 days of your change of address to the Immigration and Naturalization Service on Form AR-11 (available at any INS office).

ARRIVAL/DEPARTURE. When you depart from the United States, you must give your "Arrival-Departure Record" (Form I-94) to a representative of the steamship or airline if you leave via a seaport or airport, to a Canadian immigration officer if you leave across the Canadian border, or to a United States immigration officer if you leave across the Mexican border. However, you may keep your I-94 for reentering United States from Mexico or Canada, if you return to the U.S. within 30 days.

PENALTY. If you do not register at the school named in your Form I-20M-N or If you stop attending school, or take less than a full course of study, or accept unauthorized employment, you fail to maintain your status and may be deported from the United States.

INSTRUCTIONS TO THE SCHOOL

Failure to comply: the law provides severe criminal penalties for you and your school for failure to comply with the regulatons and instructions governing issuance of this form. Failure to comply with 8CFR 214.3(K) may subject you and your school to criminal prosecution. If you issue this form improperly, provide false information, or fail to submit required reports, the Immigration and Naturalization Service may withdraw its approval of your school for attendance by nonimmigrant students.

It Is Your Responsibility:

A. To complete Page 1 for any alien you have accepted for a full course of study in your school, if that person:
  (1) Intends to apply for admission to the United States as a nonimmigrant under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act (M-1 classification);
  (2) Is in the United States as a M-1 nonimmigrant and has applied for transfer to your school; or
  (3) Is in the United States and will apply to change his/her nonimmigrant classification to M-1.

B. To endorse Page 4 of this form for any alien you have accepted for a full course of study in your school if that person:
  (1) Is in the United States in M-1 classification and is departing temporarily from the United States, and there has been no change in the information in items 3, 4, 7, and/or 8 on Page 1. If there has been a change in items 3, 4, 7, and/or 8 on Page 1, a new Form I-20M-N/I-20 ID Copy must be issued for reentry after a temporary absence.
  (2) Has a spouse or children who wish to join the student in the United States and acquire nonimmigrant (M-2) classification, and there has been no change in the information in items 7 and/or 8 on Page 1. If there has been a change in items 7 and/or 8 on Page 1, a new Form I-20 M-N/I-20 ID Copy must be issued.

C. To establish that any student to whom you issue this form:
  (1) Is able to pay all expenses incurred (and those of any dependents with the student) while in the United States.
  (2) Meets all requirements for admission to your school. If you want assistance in determining the student's proficiency in English, contact the Cultural Affairs Officer at the Embassy of the student's country.

D. To be sure each Form I-20M-N/I-20 ID Copy is signed and issued in the United States by a designated school offical of your school as defined in 8CFR 214.3(i)(1). A designated school official who may be authorized by the school to issue this form must be a regularly employed member of the school administration, whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. Individuals whose principal obligation to the school is to recruit foreign students for compensation may not be authorized to issue this form.

E. To endorse Page 4 of this form at least every six months when the student leaves the United States for a temporary absence, if the student will be enrolled in your school immediately after reentry.

F. To retain all evidence which shows the scholastic ability and financial status on which admission was based, as long as the student is attending your school.

G. To comply with request from the Immigration and Naturalization Service for information concerning the student's immigration status.

U.S. Department of Justice
Immigration and Naturalization Service

Page 3
Certificate of Eligibility for Nonimmigrant (M-1) Student Status - For Vocational Students *(OMB No. 1115-0051)*

This page must be completed and signed in the U.S. by a designated school official.

I-20M-N (STUDENT) COPY

1.	**Family name** *(surname)*:	
	First *(given)* **name** *(do not enter middle name)*:	
	Country of birth:	**Date of birth (mo./day/year):**
	Country of citizenship:	**Admission number** *(complete if known)*
2.	**School** *(school district)* **name:**	
	School official *to be notified of student's arrival in U.S. (Name and Title)*	
	School address *(include zip code)*	
	School code *(include 3-digit suffix, if any)* and approval date: __________ 214F __________ Approved on __________	

3. This certificate is issued to the student named above for:
(check and fill out as appropriate)
a. ☐ Initial attendance at this school.
b. ☐ Continued attendance at this school.
c. ☐ School transfer.
Transferred from ____________________
d. ☐ Use by dependents for entering the United States.
e. ☐ Other ____________________

4. Level of education the student is pursuing or will pursue in the United States: *(Check only one)*
a. ☐ High school b. ☐ Other vocational school

5. The student named above has been accepted for a full course of study at this school, majoring in ____________________.
The student is expected to report to the school not later than
(date) ______________ and complete studies not later than
(date) ______________ the normal length of study is

6. ☐ English proficiency is required:
☐ The student has the required English proficiency.
☐ The student is not yet proficient, English instructions will be given at the school.
☐ English proficiency is not required because ______________
____

For Immigration Only Use

Visa issuing post	Date visa issued
Reinstated, extension granted to:	

7. This school estimates the student's average costs for an academic term of ________ (up to 12) months to be:
a. Tuition and fees $ ______________
b. Living expenses $ ______________
c. Expenses of dependents $ ______________
d. Other (specify): $ ______________
Total $ ______________

8. This school has information showing the following as the student's means of support, estimated for an academic term of months (Use the same number of months given in item 7).
a. Students personal funds $ ______________
b. Funds from this school *(specify type)* $ ______________
c. Funds from another source *(specify type and source)* $ ______________
Total $ ______________

9. Remarks: ____________________

10. School Certification I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official:	**Name of designated school official & title** *(print or type)*	**Date and place issued** *(city and state)*

11. Student Certification I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on item 2 of this form. I also authorized the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g).

Signature of student:	**Name of student** *(print or type)*	Date
Signature of parent or guardian *(if student is under 18)*	**Name of parent or guardian** *(print or type)*	Date

Address of parent or guardian: *(street)* *(city)* *(state or province)* *(county)*

Form I-20M-N/I-20ID Copy (Rev. 5-3-90)N

For official use only
Microfilm Index Number

BEST COPY AVAILABLE

IF YOU NEED MORE INFORMATION CONCERNING YOUR M-1 NONIMMIGRANT STUDENT STATUS AND THE RELATING IMMIGRATION PROCEDURES, PLEASE CONTACT EITHER YOUR FOREIGN STUDENT ADVISOR ON CAMPUS OR A NEARBY IMMIGRATION AND NATURALIZATION SERVICE OFFICE.

This page, when properly endorsed, may be used for entry of the spouse and children of an M-1 Student following to join the student in the United States, or reentry of the student to attend the same school after a temporary absence from the United States.

For reentry of the student and/or the M2 dependents *(Each Certification Signature is valid for six months.)*

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Signature of Designated School Official — Name School Official & Title *(Print or Type)* — Date

Dependent spouse and children of the M-1 student who are seeking entry/reentry to the U.S.

Name Family *(Caps)* First	Date of Birth	Country of birth	Relationship to the M-1 Student

Other Student Records:

Authority for collecting: Authority for collecting the information on this and related student forms is contained in 8U.S.C. 1101 and 1184.
The information solicited will be used by the Department of State and the Immigration and Naturalization Service to determine eligibility for the
benefits requested. The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document
in the submission of this form.

Reporting Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the
time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the
collection of information. Send comments regarding this burden estimated or any other aspect of this collection of information, including suggestions
for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 2011), Washington, D.C. 20536; and to the
Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0051, Washington, D.C. 20503.

BEST COPY AVAILABLE

U.S. Department of Justice
Immigration and Naturalization Service

OMB 1115-0077
Expires 10-31-88

Admission Number

Welcome to the United States

014240912 00

I-94 Arrival/Departure Record - Instructions

This form must be completed by all persons except U.S. citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

Item 7 - If you are entering the United States by land, enter **LAND** in this space. If you are entering the United States by ship, enter **SEA** in this space.

Form I-94 (10-01-85)N

Admission Number

014240912 00

Immigration and
Naturalization Service

I-94
Arrival Record

1. Family Name

2. First (Given) Name
3. Birth Date (Day Mo Yr)

4. Country of Citizenship
5. Sex (Male or Female)

6. Passport Number
7. Airline and Flight Number

8. Country Where You Live
9. City Where You Boarded

10. City Where Visa Was Issued
11. Date Issued (Day Mo Yr)

12. Address While in the United States (Number and Street)

13. City and State

Departure Number

014240912 00

Immigration and
Naturalization Service

I-94
Departure Record

14. Family Name

15. First (Given) Name
16. Birth Date (Day Mo Yr)

17. Country of Citizenship

See Other Side

STAPLE HERE

This Side For Government Use Only

Primary Inspection

Applicant's Name

Date Referred
Time
Insp. #

Reason Referred

☐ 212A ☐ PP ☐ Visa ☐ Parole ☐ SLB ☐ TWOV

☐ Other

Secondary Inspection

End Secondary Time
Insp. #

Disposition

18. Occupation	19. Waivers
20. INS File A -	21. INS FCO
22. Petition Number	23. Program Number
24. ☐ Bond	25. ☐ Prospective Student

26. Itinerary/Comments

27. TWOV Ticket Number

Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; ***you must surrender it when you leave the U.S.*** Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permmission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 **prior to surrendering this permit.**

Record of Changes

Port:

Departure Record

Date:

Carrier:

Flight #/Ship Name:

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0079
Application for Replacement/Initial
Nonimmigrant Arrival - Departure Document

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial
Address - In care of		
Street Number and Name		Apt. #
City	State	Zip Code
Date of Birth (Month/Day/Year)	Country of Birth	
Social Security #	A #	
Date of Last Admission into U.S. (Month/Day/Year)	I-94 #	
Current Nonimmigrant Status	Expires on (Month/Day/Year)	

Part 2. Application type. (check one)

a. ☐ I am applying to replace my lost or stolen Form I-94.
b. ☐ I am applying to replace my lost or stolen Form I-95.
c. ☐ I am applying to replace Form I-94 it because it is mutilated. I have attached my original.
d. ☐ I am applying to replace Form I-95 it because it is mutilated. I have attached my original.
e. ☐ I was not issued a Form I-94 when I entered as a nonimmigrant, and am filing this application with an application for an extension of stay/change of status.

Part 3. Processing Information.

Are you filing this application with any other petition or application?
☐ No ☐ Yes - Form #________

Are you now in exclusion or deportation proceedings?
☐ No ☐ Yes (Attach an explanation)

If you are unable to provide your original or a copy of your I-94, give the following information about your last entry to the U.S.

Class of Admission	Place of Admission

FOR INS USE ONLY

Returned Date Date	Receipt
Resubmitted Date Date	
Reloc Sent Date Date	
Reloc Rec'd Date Date	
☐ Applicant Interviewed	
New I-94 Number	
Action Block	

To Be Completed by
***Attorney or Representative*, if any**
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Part 4. Signature.

Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature Date

Part 5. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature Print Your Name Date

Firm Name and Address

Form I-102 (10/01/91) N

☆ U.S. G.P.O.: 1993 - 342-483 / 72395

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0079
Application for Replacement /Initial Nonimmigrant Arrival - Departure Document

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Purpose Of This Form.

This form is for a nonimmigrant to apply for a new or replacement Form I-94 or Form I-95 Nonimmigrant Arrival-Departure Document.

Who May File.

If you are a nonimmigrant in the U.S., file this application:

- to replace your lost or stolen Form I-94 or Form I-95;
- to replace your mutilated Form I-94 or Form I-95; or
- if you were not issued a Form I-94 when you entered as a nonimmigrant, and are filing this application with an application for extension of stay or change of status.

General Filing Instructions.

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item to which the answer refers. You must file your application with the required Initial Evidence. Every application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign the application.

Initial Evidence.

Lost or Stolen Form. If you are applying to replace a lost or stolen Form I-94 or Form I-95, submit a copy of the original Form I-94 or submit a copy of the biographic page from your passport and a copy of the page indicating admission as claimed, or other evidence of your admission. If you are unable to submit this evidence, submit a full explanation of why you cannot provide any of the above evidence along with a copy of evidence of your identity and copies of any evidence in your possession to substantiate your claim.

Mutilated Form. If you are applying to replace a mutilated Form I-94 or Form I-95, attach the original form.

First Form I-94. If you were not issued a Form I-94 at admission, have not since been issued a Form I-94, and now require an Form I-94 for another application you are filing, submit a copy of any evidence in your possession to substantiate your claimed admission.

Translations. Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this application, and you choose to send us the original, we may keep that original for our records.

Where To File.

If you are filing to replace a Form I-95, file this application at the local INS office having jurisdiction over where you are temporarily located.

If you were not issued a Form I-94 at admission, or are filing this application with an application for extension of stay or change of status, file this application where you are filing the accompanying extension of stay or change of status application.

In all other instances, file your application as follows:

If you are in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, the Virgin Islands, Virginia, or West Virginia, mail this application to: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

If you are in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail this application to: USINS Southern Service Center, P.O. Box 152122, Department A, Irving, TX 75015-2122.

If you are in Arizona, California, Guam, Hawaii, or Nevada, mail this application to: USINS Western Service Center, P.O. Box 30040, Laguna Niguel, CA 92607-0040.

If you are elsewhere in the U.S., mail this application to: USINS Northern Service Center, 100 Centennial Mall North, Room B-26, Lincoln, NE 68508.

Fee.

The fee for this application is $50.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you are in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you are in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.

Acceptance. Any application that is not signed or is not accompanied by the proper fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until it is accepted by the Service.

Initial processing. Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Decision. You will be notified in writing of the decision on your application. If the application is approved, a new Form I-94, or Form I-95 will be sent to you.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1304. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.

We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 5 minutes to learn about the law and form; (2) 5 minutes to complete the form; and (3) 15 minutes to assemble and file the application; for a total estimated average of 25 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0079, Washington, D.C. 20503.

U.S. Department of Justice
Immigration and Naturalization Service

For sale by the Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

OMB #1115-0168
Petition for a Nonimmigrant Worker

START HERE - Please Type or Print

Part 1. Information about the employer filing this petition.

If the employer is an individual, use the top name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization Name		

Address - Attn:

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code

IRS Tax #

Part 2. Information about this Petition.

(See instructions to determine the fee).

1. **Requested Nonimmigrant Classification:**
   (write classification symbol at right)
2. **Basis for Classification** (check one)
   a. ☐ New employment
   b. ☐ Continuation of previously approved employment without change
   c. ☐ Change in previously approved employment
   d. ☐ New concurrent employment
3. **Prior petition.** If you checked other than "New Employment" in item 2. (above) give the most recent prior petition number for the worker(s):
4. **Requested Action:** (check one)
   a. ☐ Notify the office in Part 4 so the person(s) can obtain a visa or be admitted (NOTE: a petition is not required for an E-1, E-2, or R visa).
   b. ☐ Change the person(s) status and extend their stay since they are all now in the U.S. in another status (see instructions for limitations). This is available only where you check "New Employment" in item 2, above.
   c. ☐ Extend or amend the stay of the person(s) since they now hold this status.
5. **Total number of workers in petition:**
   (See instructions for where more than one worker can be included.)

Part 3. Information about the person(s) you are filing for.

Complete the blocks below. Use the continuation sheet to name each person included in this petition.

If an entertainment group, give their group name.

Family Name	Given Name	Middle Initial
Date of Birth *(Month/Day/Year)*	Country of Birth	
Social Security #	A #	

If in the United States, complete the following:

Date of Arrival *(Month/Day/Year)*	I-94 #
Current Nonimmigrant Status	Expires *(Month/Day/Year)*

Form I-129 (Rev. 12/11/91) N

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ Petitioner ☐ Beneficiary	

Class:
# of Workers:
Priority Number:
Validity Dates: From
To

☐ **Classification Approved**
☐ Consulate/POE/PFI Notified
At:
☐ Extension Granted
☐ COS/Extension Granted

Partial Approval (explain)

Action Block

To Be Completed by
***Attorney or Representative*, if any**
☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 4. Processing Information.

a. If the person named in Part 3 is outside the U.S. or a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want notified if this petition is approved.

Type of Office (check one): ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

Office Address (City) U.S. State or Foreign Country

Person's Foreign Address

b. Does each person in this petition have a valid passport?
☐ Not required to have passport ☐ No - explain on separate paper ☐ Yes

c. Are you filing any other petitions with this one? ☐ No ☐ Yes - How many?

d. Are applications for replacement/Initial I-94's being filed with this petition? ☐ No ☐ Yes - How many?

e. Are applications by dependents being filed with this petition? ☐ No ☐ Yes - How many?

f. Is any person in this petition in exclusion or deportation proceedings? ☐ No ☐ Yes - explain on separate paper

g. Have you ever filed an immigrant petition for any person in this petition? ☐ No ☐ Yes - explain on separate paper

h. If you indicated you were filing a new petition in Part 2, within the past 7 years has any person in this petition:

1) ever been given the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

2) ever been denied the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

i. If you are filing for an entertainment group, has any person in this petition not been with the group for at least 1 year?
☐ No ☐ Yes - explain on separate paper

Part 5. Basic Information about the proposed employment and employer.

Attach the supplement relating to the classification you are requesting.

Job Title

Nontechnical Description of Job

Address where the person(s) will work if different from the address in Part 1.

Is this a full-time position? ☐ No - Hours per week ☐ Yes

Wages per week or per year

Other Compensation (Explain)

Value per week or per year

Dates of intended employment From: To:

Type of Petitioner - check one: ☐ U.S. citizen or permanent resident ☐ Organization ☐ Other - explain on separate paper

Type of business:

Year established:

Current Number of Employees

Gross Annual Income

Net Annual Income

Part 6. Signature.

Read the information on penalties in the instructions before completing this section.

I certify, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature and title

Print Name

Date

Please Note: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for the requested benefit, and this petition may be denied.

Part 7. Signature of person preparing form if other than above.

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have any knowledge.

Signature

Print Name

Date

Firm Name and Address

OMB #1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

H Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or total number of workers or trainees you are filing for:

List the alien's and any dependent family members; prior periods of stay in H classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an H classification. If more space is needed, attach an additional sheet.

Classification sought (check one):

- ☐ H-1A Registered Professional nurse
- ☐ H-1B1 Specialty occupation
- ☐ H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense
- ☐ H-1B3 Artist, entertainer or fashion model of national or international acclaim
- ☐ H-1B4 Artist or entertainer in unique or traditional art form
- ☐ H-1B5 Athlete
- ☐ H-1BS Essential Support Personnel for H-1B entertainer or athlete
- ☐ H-2A Agricultural worker
- ☐ H-2B Nonagricultural worker
- ☐ H-3 Trainee.
- ☐ H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1A or H-1B classification.

Describe the proposed duties

Alien's present occupation and summary of prior work experience

Statement for H-1B speciality occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment.

Petitioner's Signature Date

Statement for H-1B specialty occupations and DOD projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of authorized official of employer Date

Statement for H-1B DOD projects only:

I certify that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by the Department of Defense.

DOD project manager's signature Date

Section 2. Complete this section if filing for H-2A or H-2B classification.

Employment is: (check one)
☐ Seasonal
☐ Peakload
☐ Intermittent
☐ One-time occurrence

Temporary need is: (check one)
☐ Unpredictable
☐ Periodic
☐ Recurrent annually

Explain your temporary need for the alien's services (attach a separate paper if additional space is needed).

Continued on back.

Section 3. Complete this section if filing for H-2A classification.

The petitioner and each employer consent to allow government access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify the Service in the manner and within the time frame specified if an H-2A worker absconds or if the authorized employment ends more than five days before the relating certification document expires, and pay liquidated damages of ten dollars for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance where it cannot be demonstrated that the H-2A worker either departed the United States or obtained authorized status during the period of admission or within five days of early termination, whichever comes first.

The petitioner must execute Part A. If the petitioner is the employer's agent, the employer must execute Part B. If there are joint employers, they must each execute Part C.

Part A. Petitioner:

By filing this petition, I agree to the conditions of H-2A employment, and agree to the notice requirements and limited liabilities defined in 8 CFR 214.2 (h) (3) (vi).

Petitioner's signature Date

Part B. Employer who is not petitioner:

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf, and agree to the conditions of H-2A eligibility.

Employer's signature Date

Part C. Joint Employers:

I agree to the conditions of H-2A eligibility.

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Joint employer's signature(s) Date

Section 4. Complete this section if filing for H-3 classification.

If you answer "yes" to any of the following questions, attach a full explanation.

a. Is the training you intend to provide, or similar training, available in the alien's country? ☐ No ☐ Yes

b. Will the training benefit the alien in pursuing a career abroad? ☐ No ☐ Yes

c. Does the training involve productive employment incidental to training? ☐ No ☐ Yes

d. Does the alien already have skills related to the training? ☐ No ☐ Yes

e. Is this training an effort to overcome a labor shortage? ☐ No ☐ Yes

f. Do you intend to employ the alien abroad at the end of this training? ☐ No ☐ Yes

If you do not intend to employ this person abroad at the end of this training, explain why you wish to incur the cost of providing this training, and your expected return from this training.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
E Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Classification sought (check one):
☐ E-1 Treaty trader ☐ E-2 Treaty investor

Name of country signatory to treaty with U.S.

Section 1. Information about the Employer Outside the U.S. (if any)

Name

Address

Alien's Position - Title, duties and number of years employed

Principal Product, merchandise or service

Total Number of Employees

Section 2. Additional Information about the U.S. Employer.

The U.S. company is, to the company outside the U.S. (check one):
☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Date and Place of Incorporation or establishment in the U.S.

Nationality of Ownership (Individual or Corporate)

Name	Nationality	Immigration Status	% Ownership

Assets

Net Worth

Total Annual Income

Staff in the U.S.	Executive/Manager	Specialized Qualifications or Knowledge
Nationals of Treaty Country in E or L Status		
Total number of employees in the U.S.		

Total number of employees the alien would supervise; or describe the nature of the specialized skills essential to the U.S. company.

Section 3. Complete if filing for an E-1 Treaty Trader

Total Annual Gross Trade/Business of the U.S. company
$

For Year Ending

Percent of total gross trade which is between the U.S. and the country of which the treaty trader organization is a national.

Section 4. Complete if filing for an E-2 Treaty Investor

Total Investment:

Cash $	Equipment $	Other $
Inventory $	Premises $	Total $

Form I-129 Supplement E/L (12/11/91) N

OMB #1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

L Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

This petition is (check one): ☐ An individual petition ☐ A blanket petition

Section 1. Complete this section if filing an individual petition.

Classification sought (check one): ☐ L-1A manager or executive ☐ L-1B specialized knowledge

List the alien's, and any dependent family members' prior periods of stay in an L classification in the U.S. for the last seven years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an L classification.

Name and address of employer abroad

Dates of alien's employment with this employer. Explain any interruptions in employment.

Description of the alien's duties for the past 3 years.

Description of alien's proposed duties in the U.S.

Summarize the alien's education and work experience.

The U.S. company is, to the company abroad: (check one)

☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Describe the stock ownership and managerial control of each company.

Do the companies currently have the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad? ☐ Yes ☐ No (attach explanation)

Is the alien coming to the U.S. to open a new office?

☐ Yes (explain in detail on separate paper) ☐ No

Section 2. Complete this section if filing a Blanket Petition.

List all U.S. and foreign parent, branches, subsidiaries and affiliates included in this petition. (Attach a separate paper if additional space is needed.)

Name and Address	Relationship

Explain in detail on separate paper.

Form I-129 Supplement E/L (12/11/91) N

OMB#1115-0168

U.S. Department of Justice
Immigration and Naturalization Service

O and P Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or group or total number of workers you are filing for:

Classification sought (check one):

- ☐ O-1 Alien of extraordinary ability in sciences, art, education, or business.
- ☐ P-2 Artist or entertainer for reciprocal exchange program
- ☐ P-2S Essential Support Personnel for P-2

Explain the nature of the event

Describe the duties to be performed

If filing for O-2 or P support alien, dates of the alien's prior experience with the O-1 or P alien.

Have you obtained the required written consultations(s)? ☐ Yes - attached ☐ No - Copy of request attached

If not, give the following information about the organizations(s) to which you have sent a duplicate of this petition.

O-1 Extraordinary ability

Name of recognized peer group	Phone #
Address	Date sent

O-1 Extraordinary achievement in motion pictures or television

Name of labor organization	Phone #
Address	Date sent
Name of management organization	Phone #
Address	Date sent

O-2 or P alien

Name of labor organization	Phone #
Address	Date sent

Form I-129 Supplement O/P/Q/R (12/11/91) N

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0168
Q & R Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Section 1. Complete this section if you are filing for a Q international cultural exchange alien.

I hereby certify that the participant(s) in this international cultural exchange program:

- is at least 18 years of age,
- has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public, and
- has not previously been in the United States as a Q nonimmigrant unless he/she has resided and been physically present outside the U.S. for the immediate prior year.

I also certify that the same wages and working conditions are accorded the participants as are provided to similarly employed U.S. workers.

Petitioner's signature

Date

Section 2. Complete this section if you are filing for an R religious worker.

List the alien's, and any dependent family members, prior periods of stay in R classification in the U.S. for the last six years, Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an R classification.

Describe the alien's proposed duties in the U.S.

Describe the alien's qualifications for the vocation or occupation

Description of the relationship between the U.S. religious organization and the organization abroad of which the alien was a member.

Form I-129 Supplement O/P/Q/R (12/11/91) N

Continued on back

Supplement-1

Attach to Form I-129 when more than one person is included in the petition. *(List each person separately. Do not include the person you named on the form).*

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*		I-94#
	Current Nonimmigrant Status:		Expires on *(month/day/year)*
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*		I-94#
	Current Nonimmigrant Status:		Expires on *(month/day/year)*
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*		I-94#
	Current Nonimmigrant Status:		Expires on *(month/day/year)*
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*		I-94#
	Current Nonimmigrant Status:		Expires on *(month/day/year)*
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*		I-94#
	Current Nonimmigrant Status:		Expires on *(month/day/year)*
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Supplement-1

Attach to Form I-129 when more than one person is included in the petition. *(List each person separately. Do not include the person you named on the form).*

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S. Date of Arrival *(month/day/year)*		I-94#	
Current Nonimmigrant Status:		Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S. Date of Arrival *(month/day/year)*		I-94#	
Current Nonimmigrant Status:		Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S. Date of Arrival *(month/day/year)*		I-94#	
Current Nonimmigrant Status:		Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S. Date of Arrival *(month/day/year)*		I-94#	
Current Nonimmigrant Status:		Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

Family Name	Given Name	Middle initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S. Date of Arrival *(month/day/year)*		I-94#	
Current Nonimmigrant Status:		Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group	

U.S. Department of Justice
Immigration and Naturalization Service (INS)

OMB #1115-0054
Petition for Alien Relative

DO NOT WRITE IN THIS BLOCK - FOR EXAMINING OFFICE ONLY

Case ID#

A#

G-28 or Volag #

Section of Law
☐ 201 (b) spouse ☐ 203 (a)(1)
☐ 201 (b) child ☐ 203 (a)(2)
☐ 201 (b) parent ☐ 203 (a)(4)
☐ 203 (a)(5)
AM CON ________

Action Stamp

Fee Stamp

Petition was filed on ______________ (priority date)
☐ Personal Interview ☐ Previously Forwarded
☐ Pet ☐ Ben. "A" File Reviewed ☐ Stateside Criteria
☐ Field Investigations ☐ I-485 Simultaneously
☐ 204 (a)(2)(A) Resolved ☐ 204 (h) Resolved

Remarks:

A. Relationship

1. The alien relative is my
☐ Husband/Wife ☐ Parent ☐ Brother/Sister ☐ Child

2. Are you related by adoption?
☐ Yes ☐ No

3. Did you gain permanent residence through adoption?
☐ Yes ☐ No

B. Information about you

1. **Name** (Family name in CAPS) (First) (Middle)

2. **Address** (Number and Street) (Apartment Number)
(Town or City) (State/Country) (ZIP/Postal Code)

3. **Place of Birth** (Town or City) (State/Country)

4. **Date of Birth** (Mo/Day/Yr)

5. **Sex** ☐ Male ☐ Female

6. **Marital Status** ☐ Married ☐ Single ☐ Widowed ☐ Divorced

7. **Other Names Used** (including maiden name)

8. **Date and Place of Present Marriage** (if married)

9. **Social Security Number**

10. **Alien Registration Number** (if any)

11. **Names of Prior Husbands/Wives**

12. **Date(s) Marriages(s) Ended**

13. **If you are a U.S. citizen, complete the following:**
My citizenship was acquired through (check one)
☐ Birth in the U.S.
☐ Naturalization (Give number of certificate, date and place it was issued)
☐ Parents
Have you obtained a certificate of citizenship in your own name?
☐ Yes ☐ No
If "Yes", give number of certificate, date and place it was issued

14a. **If you are a lawful permanent resident alien, complete the following:** Date and place of admission for, or adjustment to, lawful permanent residence, and class of admission

14b. **Did you gain permanent resident status through marriage to a United States citizen or lawful permanent resident?** ☐ Yes ☐ No

C. Information about your alien relative

1. **Name** (Family name in CAPS) (First) (Middle)

2. **Address** (Number and Street) (Apartment Number)
(Town or City) (State/Country) (ZIP/Postal Code)

3. **Place of Birth** (Town or City) (State/Country)

4. **Date of Birth** (Mo/Day/Yr)

5. **Sex** ☐ Male ☐ Female

6. **Marital Status** ☐ Married ☐ Single ☐ Widowed ☐ Divorced

7. **Other Names Used** (including maiden name)

8. **Date and Place of Present Marriage** (if married)

9. **Social Security Number**

10. **Alien Registration Number** (if any)

11. **Names of Prior Husbands/Wives**

12. **Date(s) Marriages(s) Ended**

13. **Has your relative ever been in the U.S.?**
☐ Yes ☐ No

14. **If your relative is currently in the U.S., complete the following: He or she last arrived as a** (visitor, student, stowaway, without inspection, etc.)

Arrival/Departure Record (I-94) Number

Date arrived (Month/Day/Year)

Date authorized stay expired, or will expire, as shown on Form I-94 or I-95

15. **Name and address of present employer** (if any)

Date this employment began (Month/Day/Year)

16. **Has you relative ever been under immigration proceedings?**
☐ Yes ☐ No Where __________ When __________
☐ Exclusion ☐ Deportation ☐ Recission ☐ Judicial Proceedings

INITIAL RECEIPT	RESUBMITTED	RELOCATED		COMPLETED		
		Rec'd	Sent	Approved	Denied	Returned

Form I-130 (Rev. 4-11-91) Y

C. (continued) Information about your alien relative

16. List husband/wife and all children of your relative (if your relative is your husband/wife, list only his or her children).

(Name)	(Relationship)	(Date of Birth)	(Country of Birth)

17. Address in the United States where your relative intends to live
(Number and Street) (Town or City) (State)

18. Your relative's address abroad
(Number and Street) (Town or City) (Province) (Country) (Phone Number)

19. If your relative's native alphabet is other than Roman letters, write his or her name and address abroad in the native alphabet:
(Name) (Number and Street) (Town or City) (Province) (Country)

20. If filing for your husband/wife, give last address at which you both lived together: From To
(Name) (Number and Street) (Town or City) (Province) (Country) (Month) (Year) (Month) (Year)

21. Check the appropriate box below and give the information required for the box you checked:

☐ Your relative will apply for a visa abroad at the American Consulate in ____________________
(City) (Country)

☐ Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at ____________________. If your relative is not eligible for adjustment of status, he or she will
(City) (State)

apply for a visa abroad at the American Consulate in ____________________
(City) (Country)

(Designation of a consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that consulate. Acceptance is at the discretion of the designated consulate.)

D. Other Information

1. If separate petitions are also being submitted for other relatives, give names of each and relationship.

2. Have you ever filed a petition for this or any other alien before? ☐ Yes ☐ No
If "Yes," give name, place and date of filing, and result.

Warning: The INS investigates claimed relationships and verifies the validity of documents. The INS seeks criminal prosecutions when family relationships are falsified to obtain visas.

Penalties: You may, by law be imprisoned for not more than five years, or fined $250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws and you may be fined up to $10,000 or imprisoned up to five years or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit that I am seeking.

Signature ____________________ Date ____________ Phone Number ____________

Signature of Person Preparing Form if Other than Above

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge

Print Name ____________ (Address) ____________ (Signature) ____________ (Date) ____________

G-28 ID Number ____________

Volag Number ____________

NOTICE TO PERSONS FILING FOR SPOUSES IF MARRIED LESS THAN TWO YEARS

Pursuant to section 216 of the Immigration and Nationality Act, your alien spouse may be granted conditional permanent resident status in the United States as of the date he or she is admitted or adjusted to conditional status by an officer of the Immigration and Naturalization Service. Both you and your conditional permanent resident spouse are required to file a petition, Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, during the ninety day period immediately before the second anniversary of the date your alien spouse was granted conditional permanent residence.

Otherwise, the rights, privileges, responsibilities and duties which apply to all other permanent residents apply equally to a conditional permanent resident. A conditional permanent resident is not limited to the right to apply for naturalization, to file petitions in behalf of qualifying relatives, or to reside permanently in the United States as an immigrant in accordance with the immigration laws.

Failure to file Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, will result in termination of permanent residence status and initiation of deportation proceedings.

NOTE: You must complete Items 1 through 6 to assure that petition approval is recorded. Do not write in the section below item 6.

1. **Name of relative** (Family name in CAPS) (First) (Middle)

2. **Other names used by relative** (Including maiden name)

3. **Country of relative's birth** 4. **Date of relative's birth** (Month/Day/Year)

5. **Your name** (Last name in CAPS) (First) (Middle) 6. **Your phone number**

Action Stamp

SECTION

☐ 201 (b)(spouse)
☐ 201 (b)(child)
☐ 201 (b)(parent)
☐ 203 (a)(1)
☐ 203 (a)(2)
☐ 203 (a)(4)
☐ 203 (a)(5)

DATE PETITION FILED

☐ **STATESIDE CRITERIA GRANTED**

SENT TO CONSUL AT:

Relative Petition Card
Form I-130A (Rev. 4/11/91) Y

CHECKLIST

Have you answered each question?
Have you signed the petition?
Have you enclosed:

- ☐ The filing fee for each petition?
- ☐ Proof of your citizenship or lawful permanent residence?
- ☐ All required supporting documents for each petition?

If you are filing for your husband or wife have you included:

- ☐ Your picture?
- ☐ His or her picture?
- ☐ Your G-325A?
- ☐ His or her G-325A?

U.S. Department of Justice
Immigration and Naturalization Service (INS)

Petition for Alien Relative

Instructions

Read the instructions carefully. If you do not follow the instructions, we may have to return your petition, which may delay final action. If more space is needed to complete an answer continue on separate sheet of paper.

1. **Who can file?**
A citizen or lawful permanent resident of the United States can file this form to establish the relationship of certain alien relatives who may wish to immigrate to the United States. You must file a separate form for each eligible relative.

2. **For whom can you file?**
   - A. If you are a citizen, you may file this form for:
     - 1) your husband, wife, or unmarried child under 21 years old
     - 2) your unmarried child over 21, or married child of any age
     - 3) your brother or sister if you are at least 21 years old
     - 4) your parent if you are at least 21 years old.
   - B. If you are a lawful permanent resident you may file this form for:
     - 1) your husband or wife
     - 2) your unmarried child

   Note: If your relative qualifies under instruction A(2) or A(3) above, separate petitions are not required for his or her husband or wife or unmarried children under 21 years old. If your relative qualifies under instruction B(2) above, separate petitions are not required for his or her unmarried children under 21 years old. These persons will be able to apply for the same type of immigrant visa as your relative.

3. **For whom can you not file?**
You cannot file for people in the following categories:
   - A. An adoptive parent or adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least two years.
   - B. A natural parent if the United States citizen son or daughter gained permanent residence through adoption.
   - C. A stepparent or stepchild, if the marriage that created this relationship took place after the child became 18 years old.
   - D. A husband or wife, if your were not both physically present at the marriage ceremony, and the marriage was not consummated.
   - E. A husband or wife if you gained lawful permanent resident status by virtue of a prior marriage to a United States citizen or lawful permanent resident unless:
     - 1) a period of five years has elapsed since you became a lawful permanent resident; OR
     - 2) you can establish by clear and convincing evidence that the prior marriage (through which you gained your immigrant status) was not entered into for the purpose of evading any provision of the immigration laws; OR
     - 3) your prior marriage (through which you gained your immigrant status) was terminated by the death of your former spouse.
   - F. A husband or wife if he or she was in exclusion, deportation, rescission, or judicial proceedings regarding his or her right to remain in the United States when the marriage took place, unless such spouse has resided outside the United States for a two-year period after the date of the marriage.
   - G. A husband or wife if the Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.
   - H. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

4. **What documents do your need?**
You must give INS certain documents with this form to prove you are eligible to file. You must also give the INS certain documents to prove the family relationship between you and your relative.
   - A. For each document needed, give INS the original and one copy. However, because it is against the law to copy a Certificate of Naturalization, a Certificate of Citizenship or an Alien Registration Receipt Card (Form I-151 or I-551) give INS the original only. **Originals will be returned to you.**
   - B. If you do not wish to give INS the original document, you may give INS a copy. The copy must be certified by:
     - 1) an INS or U.S. consular officer, or
     - 2) an attorney admitted to practice law in the United States, or
     - 3) an INS accredited representative (INS may still require originals).
   - C. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

5. **What documents do you need to show you are a United States citizen?**
   - A. If you were born in the United States, give INS your birth certificate.
   - B. If you were naturalized, give INS your original Certificate of Naturalization.
   - C. If you were born outside the United States, and you are a U.S. citizen through your parents, give INS:
     - 1) your original Certificate of Citizenship, or
     - 2) your Form FS-240 (Report of Birth Abroad of a United States Citizen).
   - D. In place of any of the above, you may give INS your valid unexpired U.S. passport that was initially issued for at least 5 years.
   - E. If you do not have any of the above and were born in the United States, see instruction under 8 below. *"What if a document is not available?"*

6. **What documents do you need to show you are a permanent resident?**
You must give INS your alien registration receipt card (Form I-151 or Form I-551). Do not give INS a photocopy of the card.

7. **What documents do you need to prove family relationship?**
You have to prove that there is a family relationship between your relative and yourself.

   In any case where a marriage certificate is required, if either the husband or wife was married before, you must give INS documents to show that all previous marriages were legally ended. In cases where the names shown on the supporting documents have changed, give INS legal documents to show how the name change occurred (for example a marriage certificate, adoption decree, court order, etc.)

   Find the paragraph in the following list that applies to the relative for whom you are filing.

If you are filing for your:

A. **husband or wife,** give INS
   1) your marriage certificate
   2) a color photo of you and one of your husband or wife, taken within 30 days of the date of this petition. These photos must have a white background. They must be glossy, unretouched, and not mounted. The dimension of the facial image should be about 1 inch from chin to top of hair in 3/4 frontal view, showing the right side of the face with the right ear visible. Using pencil or felt pen lightly print name (and Alien Registration Number, if known) on the back of each photograph.
   3) a completed and signed G-325A (Biographic Information) for you and one for your husband or wife. Except for name and signature, you do not have to repeat on the G-325A the information given on your I-130 petition.

B. **child** and you are the **mother,** give the child's birth certificate showing your name and the name of your child.

C. **child** and you are the **father or stepparent,** give the child's birth certificate showing both parents' names and your marriage certificate. **Child** born out of wedlock and you are the **father,** give proof that a parent/child relationship exists or existed. For example, the child's birth certificate showing your name and evidence that you have financially supported the child. (A blood test may be necessary).

D. **brother or sister,** your birth certificate and the birth certificate of your brother or sister showing both parents' names. If you do not have the same mother, you must also give the marriage certificates of your father to both mothers.

E. **mother,** give your birth certificate showing your name and the name of your mother.

F. **father,** give your birth certificate showing the names of both parents and your parents' marriage certificate.

G. **stepparent,** give your birth certificate showing the names of both natural parents and the marriage certificate of your parent to your stepparent.

H. **adoptive parent or adopted child,** give a certified copy of the adoption decree, the legal custody decree if you obtained custody of the child before adoption, and a statement showing the dates and places you have lived together with the child.

8. **What if a document is not available?**
If the documents needed above are not available, you can give INS the following instead. (INS may require a statement from the appropriate civil authority certifying that the needed document is not available.)

A. Church record: A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of child's birth, date of the religious ceremony, and the names of the child's parents.

B. School record: A letter from the authorities of the school attended (preferably the first school), showing the date of admission to the school, child's date and place of birth, and the names and places of birth parents, if shown in the school records.

C. Census record: State or federal census record showing the names, place of birth, and date of birth or the age of the person listed.

D. Affidavits: Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove; for example, the date and place of birth, marriage, or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth, and his or her relationship to you, if any; full information concerning the event; and complete details concerning how the person acquired knowledge of the event.

9. **How should you prepare this form?**
A. Type or print legibly in ink.
B. If you need extra space to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
C. Answer all questions fully and accurately. If any item does not apply, please write "N/A".

10. **Where should you file this form?**
A. If you live in the United States, send or take the form to the INS office that has jurisdiction over where you live.
B. If you live outside the United States, contact the nearest American Consulate to find out where to send or take the completed form.

11. **What is the fee?**
You must pay seventy five dollars ($75.00) to file this form. **The fee will not be refunded, whether the petition is approved or not.** DO NOT MAIL CASH. All checks or money orders, whether U.S. or foreign, must be payable in U.S. currency at a financial institution in the United States. When a check is drawn on the account of a person other than yourself, write your name on the face of the check. If the check is not honored, INS will charge you $5.00.

Pay by check or money order in the exact amount. Make the check or money order payable to "Immigration and Naturalization Service". However,
A. if you live in Guam: Make the check or money order payable to "Treasurer, Guam", or
B. if you live in the U.S. Virgin Islands: Make the check or money order payable to "Commissioner of Finance of the Virgin Islands".

12. **When will a visa become available?**
When a petition is approved for the husband, wife, parent, or unmarried minor child of a United States citizen, these relatives do not have to wait for a visa number, as they are not subject to the immigrant visa limit. However, for a child to qualify for this category, all processing must be completed and the child must enter the United States before his or her 21st birthday.

For all other alien relatives there are only a limited number of immigrant visas each year. The visas are given out in the order in which INS receives properly filed petitions. To be considered properly filed, a petition must be completed accurately and signed, the required documents must be attached, and the fee must be paid.

For a monthly update on the dates for which immigrant visas are available, you may call (202) ~~647-0508.~~ 663-1541

13. **What are the penalties for committing marriage fraud or submitting false information or both?**
Title 8, United States Code, Section 1325 states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000.00 or both.

Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

14. **What is our authority for collecting this information?**
We request the information on the form to carry out the immigration laws contained in Title 8, United States Code, Section 1154(a). We need this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

15. **Reporting Burden.**
Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0054, Washington, D.C. 20503.

It is not possible to cover all the conditions for eligibility or to give instructions for every situation. If you have carefully read all the instructions and still have questions, please contact your nearest INS office.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0005
Application for Travel Document

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code
Date of Birth (Month/Day/Year)	Country of Birth
Social Security #	A #

Part 2. Application Type (check one).

a. ☐ I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

b. ☐ I now hold U.S. refugee or asylee status and I am applying for a Refugee Travel Document.

c. ☐ I am a permanent resident as a direct result of refugee or asylee status, and am applying for a Refugee Travel Document.

d. ☐ I am applying for an Advance Parole to allow me to return to the U.S. after temporary foreign travel.

e. ☐ I am outside the U.S. and am applying for an Advance Parole.

f. ☐ I am applying for an Advance Parole for another person who is outside the U.S. Give *the following information about that person:*

Family Name	Given Name	Middle Initial
Date of Birth (Month/Day/Year)	Country of Birth	

Foreign Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code

Part 3. Processing Information.

Date of intended departure (Month/Day/Year)	Expected length of trip.

Are you, or any person included in this application, now in exclusion or deportation proceedings?

☐ No ☐ Yes, at (give office name) ____________

If applying for an Advance Parole Document, skip to Part 7.

Have you ever before been issued a Reentry Permit or Refugee Travel Document?

☐ No ☐ Yes (give the following for the last document issued to you)

Date Issued	Disposition (attached, lost, etc.)

Form I-131 (Rev. 12/10/91) N

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Applicant Interviewed on	

Document Issued
☐ Reentry Permit
☐ Refugee Travel Document
☐ Single Advance Parole
☐ Multiple Advance Parole
Validity to ____________

If Reentry Permit or Refugee Travel Document
☐ Mail to Address in Part 2
☐ Mail to American Consulate
☐ Mail to INS overseas office
AT

Remarks:
☐ Document Hand Delivered
On By

Action Block

To Be Completed by
***Attorney* or *Representative*, if any**
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Part 3. Processing Information. (continued)

Where do you want this travel document sent? (check one)

a. ☐ Address in Part 2, above
b. ☐ American Consulate at (give City and Country, below)
c. ☐ INS overseas office at (give City and Country, below)

City Country

If you checked b. or c., above, give your overseas address:

Part 4. Information about the Proposed Travel.

Purpose of trip. *If you need more room, continue on a separate sheet of paper.*	List the countries you intend to visit.

Part 5. Complete only if applying for a Reentry Permit.

Since becoming a Permanent Resident (or during the past five years, whichever is less) how much total time have you spent outside the United States?	☐ less than 6 months ☐ 6 months to 1 year ☐ 1 to 2 years	☐ 2 to 3 years ☐ 3 to 4 years ☐ more than 4 years
Since you became a Permanent Resident, have you ever filed a federal income tax return as a nonresident, or failed to file a federal return because you considered yourself to be a nonresident? (if yes, give details on a separate sheet of paper).	☐ Yes	☐ No

Part 6. Complete only if applying for a Refugee Travel Document.

Country from which you are a refugee or asylee:

If you answer yes to any of the following questions, explain on a separate sheet of paper.

Do you plan to travel to the above-named country?	☐ Yes	☐ No
Since you were accorded Refugee/Asylee status, have you ever: returned to the above-named country; applied for and/or obtained a national passport, passport renewal, or entry permit into this country; or applied for and/or received any benefit from such country (for example, health insurance benefits)?	☐ Yes	☐ No
Since being accorded Refugee/Asylee status, have you, by any legal procedure or voluntary act, re-acquired the nationality of the above-named country, acquired a new nationality, or been granted refugee or asylee status in any other country?	☐ Yes	☐ No

Part 7. Complete only if applying for an Advance Parole.

On a separate sheet of paper, please explain how you qualify for an Advance Parole and what circumstances warrant issuance of Advance Parole. Include copies of any documents you wish considered. (See instructions.)

For how may trips do you intend to use this document? ☐ 1 trip ☐ More than 1 trip

If outside the U.S., at right give the U.S. Consulate or INS office you wish notified if this application is approved.

Part 8. Signature.

Read the information on penalties in the instructions before completing this section. You must file this application while in the United States if filing for a reentry permit or refugee travel document.

I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature Date Daytime Telephone #
( )

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application will have to be denied.*

Part 9. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature Print Your Name Date

Firm Name
and Address

Daytime Telephone #
( )

•U.S. GPO:1992-312-328/51145

U.S. Department of Justice
Immigration and Naturalization Service

OMB# 1115-0005
Application for Travel Document

INSTRUCTIONS

Purpose of This Form.

This form is used to apply for an INS travel document, reentry permit, refugee travel document, or advance parole document. Each applicant must file a separate application.

Who May File.

Reentry permit. If you are in the United States as a permanent resident or conditional resident, you may apply for a reentry permit. A reentry permit allows a permanent resident or conditional resident to apply for admission to the U.S. during the permit's validity without having to obtain a returning resident visa from an American Consulate. A reentry permit is not required for return from a trip of less than one year's duration.

Possession of a reentry permit does not relieve you of any of the requirements of the immigration laws except the necessity to obtain a visa from an American consulate. For the purpose of later naturalization, absence from the United States for 1 year or more will normally break the continuity of any required period of continuous residence in the United States and you will need to file an application to preserve residence for naturalization purposes. Inquire at your local INS office for further information.

Refugee travel document. If you are in the United States in a valid refugee or asylee status, or obtained permanent residence as a direct result of refugee or asylee status in the U.S. you may apply for a refugee travel document. A refugee travel document is a document issued by the Service in implementation of Article 28 of the U.N. Convention of July 28, 1951. You must have a refugee travel document to return to the United States after temporary travel abroad unless you are traveling to Canada to apply for a U.S. immigrant visa (see advance parole document below).

Advance parole document. *If you are outside the United States* and must travel to the United States temporarily for emergent business or personal reasons, you may apply for an advance parole document to be paroled into the U.S. on humanitarian grounds if you cannot obtain the necessary visa and any required waiver of excludability. Parole cannot be used to circumvent normal visa issuing procedures, and is not a means to bypass delays in visa issuance. Parole is an extraordinary measure, sparingly used to bring an otherwise inadmissible alien into the U.S. for a temporary period of time due to a very compelling emergency.

Another person who is in the U.S. may file this application in your behalf. He or she should complete Part 1 with information about himself or herself.

If you are in the United States you may apply for an Advance Parole document if you:

- have an adjustment of status application pending which is only being held in abeyance because a visa number is not immediately available and you seek to travel abroad for bona fide business or emergent personal reasons;
- have an adjustment of status application pending for any other reason and you seek to travel abroad for emergent personal or bona fide business reasons;
- hold refugee or asylum status and intend to depart temporarily to apply for a U.S. immigrant visa in Canada, or
- seek to travel abroad temporarily for emergent personal or bona fide business reasons.

An advance parole document is issued solely to authorize the temporary parole of an individual into the United States. It may be accepted by a transportation company in lieu of a visa as authorization for the holder to travel to the United States. It is not issued to serve in lieu of any required passport.

Additional Processing Criteria.

Reentry Permit or Refugee Travel Document. A reentry permit or refugee travel document may not be issued to you if:

- you have already been issued such a document and it is still valid, unless the prior document has been returned to the Service or you can demonstrate it was lost; or
- due to national security, diplomatic or public safety reasons the government has published a notice in the Federal Register precluding issuance of such a document for travel to the area you intend to go to.

In addition, a reentry permit may not be issued if you have been a permanent resident for more than 5 years and have been outside the U.S. for more than 4 of the last 5 years, unless you are a crewman regularly serving abroad an aircraft or vessel of American registry and the travel is in connection with your duties as a crewman,or your travel is on the orders of the United States government, other than exclusion or deportation order.)

Advance Parole. An advance parole may not be issued to a person who is in deportation proceedings, is the beneficiary of a private bill, or is subject to the 2 year foreign residence requirement due to having held J-1 nonimmigrant status.

General Filing Instructions.

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your A#, if any, and indicate the number of the item. Every application must be properly signed and filed with the correct fee. You must file your application with the required Initial Evidence. If you are under 14 years of age, your parent or guardian may sign the application in your behalf.

A reentry permit or refugee travel document may be sent to a U.S. Consulate or INS office overseas for you to pick up if you request it when you file your application. However, you must be in the U.S. when you file the application.

Initial Evidence.

Evidence of eligibility. *If you are a permanent resident or conditional resident,* you must attach:

- a copy of your alien registration receipt card; or
- if you have not yet received your alien registration receipt card, a copy of the biographic page and the page indicating initial admission as a permanent resident of your passport, or other evidence that you are a permanent resident; or
- a copy of the approval notice of a separate application for replacement of your alien registration receipt card or temporary evidence of permanent resident status.

If you are a refugee or asylee applying for a refugee travel document, you must attach a copy of the document issued to you by the Service showing your refugee or asylee status and indicating the expiration of such status.

If you are in the U.S. and are applying for an advance parole document for yourself you must attach a copy of any document for yourself issued by the Service showing any present status in the United States, and an explanation or other evidence demonstrating the circumstances that warrant issuance of advance parole. If you are basing your eligibility for advance parole on your separate application for adjustment of status, you must also attach a copy of the filing receipt for that application. If you are traveling to Canada to apply for an immigrant visa, you must also attach a copy of the consular appointment.

If the person to be paroled is outside the U.S., you must also submit:

- a statement of how, and by whom, medical care, housing, transportation, and other expenses and subsistence need will be met;
- an Affidavit of Support (Form I-134), with evidence of the sponsor's occupation and ability to provide necessary support;

- a statement of why a U.S. visa cannot be obtained, including when and where attempts were made to obtain a visa;
- a statement of why a waiver of excludability cannot be obtained to allow issuance of a visa, including when and where attempts were made to obtain a waiver, and a copy of any written decision;
- a copy of any decision on an immigrant petition filed for the person, and evidence regarding any pending immigrant petition; and
- a complete description of the emergent reasons why parole should be authorized and copies of any evidence you wish considered, and indicating the length of time for which parole is requested.

Photographs. You must submit 2 identical natural color photographs of yourself taken within 30 days of this application. The photos must have a white background, be unmounted, printed on thin paper, and be glossy and unretouched. They should show a three-quarter frontal profile showing the right side of your face, with your right ear visible and with your head bare (unless you are wearing a headdress as required by a religious order of which you are a member). The photos should be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 and 1/4 inches. Lightly print your A# on the back of each photo with a pencil. (If you are applying for an advance parole and are outside the U.S., keep these photographs. You will be instructed as to where to submit them if parole is approved. If you are applying for parole for another person, the required photographs are of the person to be paroled.)

Copies. If these instructions state that a copy of a document may be filed with this application and you choose to send us the original, we may keep that original for our records.

Where to File.
Reentry Permit or Refugee Travel Document. Mail your application to: USINS, Northern Service Center, 100 Centennial Mall North, Room B-26, Lincoln, NE 68508.

Advance Parole. If the person being filed for is in the United States, file the application at the INS office with jurisdiction over the area in which you live. If he or she is not in the United States, mail it to: USINS, Office of International Affairs and Parole, 425 I Street N.W., Room 1203, Washington, DC 20536.

Effect of Travel Before the Travel Document Is Issued.
Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document does not affect the application. Departure from the United States or application for admission to the United States before a decision is made on an application for an advance parole document shall be deemed an abandonment of the application.

Fee.
The fee for this application is $65.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:
- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Acceptance. Any application that is not signed or is not accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until it is accepted by the Service.

Initial processing. Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. You will be advised of the decision on your application. If it is approved, the document will be issued.

Invalidation. Any travel document obtained by making a material false representation or concealment in this application will be invalid. A document will also be invalid if you are ordered excluded or deported. In addition, a refugee travel document will be invalid if the U.N. Convention of July 28, 1951, shall cease to apply or shall not apply to you as provided in Article 1C, D, E, or F of the Convention.

Effect of Claim to Nonresident Alien Status for Federal Income Tax Purposes.
An alien who has actually established residence in the United States after having been admitted as an immigrant or after having adjusted status to that of an immigrant, and who is considering the filing of a nonresident alien tax return or the non-filing of a tax return on the ground that he/she is a nonresident alien, should consider carefully the consequences under the immigration and naturalization laws if he/she does so.

If you take such action, you may be regarded as having abandoned residence in the United States and as having lost immigrant status under the immigration and naturalization laws. As a consequence, you may be ineligible for a visa or other document for which lawful permanent resident aliens are eligible; you may be inadmissible to the United States if you seek admission as a returning resident; and you may become ineligible for naturalization on the basis of your original entry or adjustment as an immigrant.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1203 and 1225. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 10 minutes to learn about the law and form; (2) 10 minutes to complete the form; and (3) 35 minutes to assemble and file the application, for a total estimated average of 55 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0005, Washington, D.C. 20503.

OMB No. 1115-0062

U. S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support

(ANSWER ALL ITEMS: FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

I, ______________________________ *residing at* ______________________________
(Name) (Street and Number)

____
(City) (State) (ZIP Code if in U.S.) (Country)

BEING DULY SWORN DEPOSE AND SAY:

1. I was born on ____________________ at ______________________________
(Date) (City) (Country)

If you are ***not*** a native born United States citizen, answer the following as appropriate:

a. If a United States citizen through naturalization, give certificate of naturalization number ______________

b. If a United States citizen through parent(s) or marriage, give citizenship certificate number ______________

c. If United States citizenship was derived by some other method, attach a statement of explanation.

d. If a lawfully admitted permanent resident of the United States, give "A" number ______________

2. That I am ________ years of age and have resided in the United States since (date) ______________

3. That this affidavit is executed in behalf of the following person:

Name		Sex	Age
Citizen of--(Country)	Marital Status	Relationship to Deponent	
Presently resides at--(Street and Number)	(City)	(State)	(Country)

Name of spouse and children accompanying or following to join person:

Spouse	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 will not become a public charge in the United States.

5. That I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture, who may make it available to a public assistance agency.

7. That I am employed as, or engaged in the business of ____________________ with ____________________
(Type of Business) (Name of concern)

at ____
(Street and Number) (City) (State) (Zip Code)

I derive an annual income of *(if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.)* $______________

I have on deposit in savings banks in the United States $______________

I have other personal property, the reasonable value of which is $______________

Form I-134 (Rev. 12-1-84) Y

OVER

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief. $

I have life insurance in the sum of $

With a cash surrender value of $

I own real estate valued at $

With mortgages or other encumbrances thereon amounting to $

Which is located at
(Street and Number) (City) (State) (Zip Code)

8. That the following persons are dependent upon me for support: *(Place an "X" in the appropriate column to indicate whether the person named is **wholly** or **partially** dependent upon you for support.)*

Name of Person	Wholly Dependent	Partially Dependent	Age	Relationship to Me

9. That I have previously submitted affidavit(s) of support for the following person(s). If none, state "***None***"

Name Date submitted

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none.

Name Relationship Date submitted

11. ***(Complete this block only if the person named in item 3 will be in the United States temporarily.)***

That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. *(If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, or for how long.)*

OATH OR AFFIRMATION OF DEPONENT

I acknowledge at that I have read Part III of the Instructions, Sponsor and Alien Liability, and am aware of my responsibilities as an immigrant sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended.

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.

Signature of deponent

Subscribed and sworn to (affirmed) before me this ___ ***day of*** ___ , 19 ___

at ___ ***My commission expires on***

Signature of Officer Administering Oath ___ ***Title***

If affidavit prepared by other than deponent, please complete the following: I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have knowledge.

(Signature) ***(Address)*** ***(Date)***

BEST COPY AVAILABLE

(Please tear off this sheet before submitting Affidavit)

U. S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support

INSTRUCTIONS

I. EXECUTION OF AFFIDAVIT. A separate affidavit must be submitted for each person. You must sign the affidavit in your full, true and correct name and affirm or make it under oath. If you are **in the United States** the affidavit may be sworn or affirmed before an immigration officer without the payment of fee, or before a notary public or other officer authorized to administer oaths for general purposes, in which case the official seal or certificate of authority to administer oaths must be affixed. If you are **outside the United States** the affidavit must be sworn to or affirmed before a United States consular or immigration officer.

II. SUPPORTING EVIDENCE. The deponent must submit in duplicate evidence of income and resources, as appropriate:

A. Statement from an officer of the bank or other financial institution in which you have deposits giving the following details regarding your account:

1. Date account opened.
2. Total amount deposited for the past year.
3. Present balance.

B. Statement of your employer on business stationery, showing:

1. Date and nature of employment.
2. Salary paid.
3. Whether position is temporary or permanent.

C. If self-employed:

1. Copy of last income tax return filed or,
2. Report of commercial rating concern.

D. List containing serial numbers and denominations of bonds and name of record owner(s).

III. SPONSOR AND ALIEN LIABILITY. Effective October 1, 1980, amendments to section 1614(f) of the Social Security Act and Part A of Title XVI of the Social Security Act establish certain requirements for determining the eligibility of aliens who apply for the first time for Supplemental Security Income (SSI) benefits. Effective October 1, 1981, amendments to section 415 of the Social Security Act establish similar requirements for determining the eligibility of aliens who apply for the first time for Aid to Families with Dependent Children (AFDC) benefits. Effective December 22, 1981, amendments to the Food Stamp Act of 1977 affect the eligibility of alien participation in the Food Stamp Program. These amendments require that the income and resources of any person who, as the sponsor of an alien's entry into the United States, executes an affidavit of support or similar agreement on behalf of the alien, and the income and resources of the sponsor's spouse *(if living with the sponsor)* shall be deemed to be the income and resources of the alien under formulas for determining eligibility for SSI, AFDC, and Food Stamp benefits during the three years following the alien's entry into the United States.

An alien applying for SSI must make available to the Social Security Administration documentation concerning his or her income and resources and those of the sponsor including information which was provided in support of the application for an immigrant visa or adjustment of status. An alien applying for AFDC or Food Stamps must make similar information available to the State public assistance agency. The Secretary of Health and Human Services and the Secretary of Agriculture are authorized to obtain copies of any such documentation submitted to INS or the Department of State and to release such documentation to a State public assistance agency.

Sections 1621(e) and 415(d) of the Social Security Act and subsection 5(i) of the Food Stamp Act also provide that an alien and his or her sponsor shall be jointly and severably liable to repay any SSI, AFDC, or Food Stamp benefits which are incorrectly paid because of misinformation provided by a sponsor or because of a sponsor's failure to provide information. Incorrect payments which are not repaid will be withheld from any subsequent payments for which the alien or sponsor are otherwise eligible under the Social Security Act or Food Stamp Act, except that the sponsor was without fault or where good cause existed.

These provisions do not apply to the SSI, AFDC or Food Stamp eligibility of aliens admitted as refugees, granted political asylum by the Attorney General, or Cuban Haitian entrants as defined in section 501(e) of P.L. 96-422 and of dependent children of the sponsor or sponsor's spouse. They also do not apply to the SSI or Food Stamp eligibility of an alien who becomes blind or disabled after admission into the United States for permanent residency.

IV. AUTHORITY/USE/PENALTIES. Authority for the collection of the information requested on this form is contained in 8 U.S.C. 1182(a)(15), 1184(a), and 1258. The information will be used principally by the Service, or by any consular officer to whom it may be furnished, to support an alien's application for benefits under the Immigration and Nationality Act and specifically the assertion that he or she has adequate means of financial support and will not become a public charge. Submission of the information is voluntary. It may also, as a matter of routine use, be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies, including the Department of Health and Human Services, the Department of Agriculture, the Department of State, the Department of Defense and any component thereof (if the deponent has served or is serving in the armed forces of the United States), the Central Intelligence Agency, and individuals and organizations during the course of any investigation to elicit further information required to carry out Service functions. Failure to provide the information may result in the denial of the alien's application for a visa, or his or her exclusion from the United States.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0061
Immigrant Petition for Alien Worker

START HERE - Please Type or Print

Part 1. Information about the person or organization filing this petition.

If an individual is filing, use the top Name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization		

Address - Attn:

Street Number and Name	Room #
City	State or Province
Country	ZIP/Postal Code
IRS Tax #	Social Security #

Part 2. Petition Type.

This petition is being filed for: (check one)

- a. ☐ An alien of extraordinary ability
- b. ☐ An outstanding professor or researcher
- c. ☐ A multinational executive or manager
- d. ☐ A member of the professions holding an advanced degree or an alien of exceptional ability
- e. ☐ A skilled worker (requiring at least two years of specialized training or experience) or professional
- f. ☐ An employee of a U.S. business operating in Hong Kong
- g. ☐ Any other worker (requiring less than two years training or experience)

Part 3. Information about the person you are filing for.

Family Name	Given Name	Middle Initial

Address - C/O

Street # and Name	Apt. #
City	State or Province
Country	Zip or Postal Code
Date of Birth (month/day/year)	Country of Birth
Social Security # (if any)	A # (if any)

If in the U.S.	Date of Arrival (month/day/year)	I-94#
	Current Nonimmigrant Status	Expires on (month/day/year)

Part 4. Processing Information.

Below give the U.S. Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

U.S Consulate: City Country

Form I-140 (Rev. 12-2-91)

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner Interviewed ☐ Beneficiary Interviewed	

Classification

- ☐ 203(b)(1)(A) Alien Of Extraordinary Ability
- ☐ 203(b)(1)(B) Outstanding Professor or Researcher
- ☐ 203(b)(1)(C) Multi-national executive or manager
- ☐ 203(b)(2) Member of professions w/adv degree or of exceptional ability
- ☐ 203(b)(3) (A) (i) Skilled worker
- ☐ 203(b)(3) (A) (ii) Professional
- ☐ 203(b)(3) (A) (iii) Other worker
- ☐ Sec. 124 IMMACT-Employee of U.S. business in Hong Kong

Priority Date	**Consulate**

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any

☐ Fill in box if G-28 is attached to represent the petitioner

VOLAG#

ATTY State License #

Part 4. Processing Information. *(continued)*

If you gave a U. S. address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name	Address

Are you filing any other petitions or applications with this one?	☐ No	☐ yes attach an explanation
Is the person you are filing for in exclusion or deportation proceedings?	☐ No	☐ yes attach an explanation
Has an immigrant visa petition ever been filed by or in behalf of this person?	☐ No	☐ yes attach an explanation

Part 5. Additional information about the employer.

Type of petitioner (check one)
☐ Self ☐ Individual U.S. Citizen ☐ Company or organization
☐ Permanent Resident ☐ Other explain ______________________

If a company, give the following:
Type of business

Date Established	Current # of employees	Gross Annual Income	Net Annual Income

If an individual, give the following: Occupation	Annual Income

Part 6. Basic information about the proposed employment.

Job Title	Nontechnical description of job

Address where the person will work if different from address in Part 1.

Is this a full-time position?	☐ yes	☐ No (hours per week ________)	Wages per week
Is this a permanent position?:	☐ yes ☐ No	Is this a new position?	☐ yes ☐ No

Part 7. Information on spouse and all children of the person you are filing for.

Provide an attachment listing the family members of the person you are filing for. Be sure to include their full name, relationship, date and country of birth, and present address.

Part 8. Signature. *Read the information on penalties in the instructions before completing this section.*

I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Date

***Please Note:** If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application may to be denied.*

Part 9. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date

Firm Name and Address

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Student or Exchange Visitor

OMB No. 1115-0068
Expires 8-31-85

Your admission to the United States has been **LIMITED TO 30 DAYS** because you do not have the document checked below.

☐ The correct revision of Form I-20A-B or I-20M-N executed by the school to which you are destined

☐ Form IAP-66 executed by the sponsor of the exchange program to which you are destined

You must obtain the required form and submit it to the United States Immigration and Naturalization Service office at the location and before the date shown below. If the first box above is checked, you must complete page 2 of the Form I-20A or I-20M. If the second box above is checked, you must complete Form IAP-66. If you are a student, you must also submit your Form I-20 ID copy if you have been issued such a form. If you have not been issued a Form I-20 ID copy, you must submit your Form I-94 (Arrival-Departure Record) and an unendorsed Form I-20 ID copy with your name, date of birth and country of citizenship filled out. If you are an exchange visitor, you must submit your Form I-94. If you are accompanied by your spouse and children, you should also submit the Forms I-94 issued to them. (If your I-94 is attached to your passport, the permit should be removed for this purpose). DO NOT SEND IN YOUR PASSPORT.

YOU MUST ALSO COMPLETE THE BLOCK BELOW BEFORE SUBMITTING THIS FORM TO THE IMMIGRATION AND NATURALIZATION SERVICE.

My name is: (Last)	(First)	(Middle)
My Address in the U.S. will be:		My passport is valid to (Date):
Consular post where my visa was issued:	Date my visa was issued:	Number of my visa:
The name of my accompanying spouse (if any) is:		Spouse's passport is valid to:
My accompanying children's names are:		Their passports are valid to:

THIS FORM, FULLY EXECUTED, AND REQUIRED DOCUMENTS MUST BE SUBMITTED BEFORE

_______________________________ to the UNITED STATES IMMIGRATION AND NATURALIZATION

SERVICE OFFICE LOCATED AT

Form I-515 (Rev. 8-2-83) Y

GPO 901-608

U.S. Department of Justice
Immigration and Naturalization Service

OMB Approval No 1115-0060
Certification by Designated School Official

SECTION A. This section must be completed by student as appropriate (Please print or type) :

1. Name: *(Family in CAPS)* *(First)* *(Middle)*	2. Date of birth:
3. Student admission number:	4. Date first granted F-1 or M-1 status
5. Level of education being sought	6. Student's major field of study

7. Describe the proposed employment for practial training

Beginning date : Ending date Number of hours per week

8. List all periods of previously authorized employment for practical training

A. Curricular or work study	Post completion of studies

Signature of student ______________________ Date ____________

SECTION B. This Section must be completed by the designated school official of the school the student is attending or was last authorized to attend:

9. I hereby certify that

The student named above:
- ☐ Is taking a full course of study at this school, and the expected date of completion is ________
- ☐ Is taking less than a full course of study at this school because ________
- ☐ Completed the course of study at this school on (date) ________
- ☐ Did not complete the course of study. Terminated attendance on (date) ________

Check one

☐ A. The employment is for practical training in the student's field of study. The student has been in the educational program for at least 9 months and is eligible for the requested practical training in accordance with INS regulations at 8CFR 214.2(f) (10).

☐ B The endorsement for off-campus employment is based on the wage-and-labor attestation filed by the employer in accordance with the requirements set forth by the Secretary of Labor. The student has been in F-1 status for at least one year and is in good academic standing. Copy of the employer's attestation is attached.

☐ C. The employment is for an internship with a recognized international organization and is within the scope of the organization's sponsorship. The student has been in F-1 status for at least 9 months and is in good academic standing.

10. Name and title of DSO	Signature	Date
11. Name of school	School file number	Telephone no

For Official Use only
Microfilm Index Number:

Form I-538 (Rev. 07/08/91)N (See instructions on reverse)

Instructions

A Student seeking authorization for off-campus employment (F-1 only) or practical training (F-1 and M-1) must submit as supporting documentation to Form I-765, Application for Employment Authorization, a certification by the designated school official (DSO) of the school they were last authorized to attend. Certification by the DSO is required of all students (F-1 and M-1) seeking authorization for employment off campus or practical training, including required or optional curricular practical training. The DSO must certify on Form I-538 that the proposed employment is directly related to the student's field of study. A copy of the DSO's certification must be mailed to the STSC date processing center, P.O. Box 140, Highway 25 South, London, Ky. 40741.

All students requesting school certification must complete questions 1 through 6. Students requesting recommendation for practical training must complete questions 7 and 8. Answers to questions 7 through 9 may be continued on this page if needed.

M-1 students seeking extensions of stay must submit a completed Form I-539, Application to Extend time of Temporary Stay, supported by a current Form I-20M-N as appropriate.

Reporting Burden

Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, D.C. 20536; and to the Office Management and Budget, Paperwork Reduction Project, OMB No. 1115-0060 Washington, D.C. 20503.

Comments:

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0093
Application to Extend/ChangeNonimmigrant Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial
Address - In Care of:		
Street # and Name		Apt. #
City	State	
Zip Code		
Date of Birth (month/day/year)	Country of Birth	
Social Security # (if any)	A# (if any)	
Date of Last Arrival Into the U.S.	I-94#	
Current Nonimmigrant Status	Expires on (month/day/year)	

Part 2. Application Type.

(See instructions for fee.)

1. **I am applying for:** (check one)
   a. ☐ an extension of stay in my current status
   b. ☐ a change of status. The new status I am requesting is: ______
2. **Number of people included in this application:** (check one)
   a. ☐ I am the only applicant
   b. ☐ Members of my family are filing this application with me. The Total number of people included in this application is ______ (complete the supplement for each co-applicant)

Part 3. Processing information.

1. I/We request that my/our current or requested status be extended until (month/day/year) ______
2. Is this application based on an extension or change of status already granted to your spouse, child or parent?
   ☐ No ☐ Yes (receipt # ______)
3. Is this application being filed based on a separate petition or application to give your spouse, child or parent an extension or change of status?
   ☐ No ☐ Yes, filed with this application ☐ Yes, filed previously and pending with INS
4. If you answered yes to question 3, give the petitioner or applicant name:

   If the application is pending with INS, also give the following information.
   Office filed at ______ Filed on ______ (date)

Part 4. Additional information.

1. For applicant #1, provide passport information: Country of issuance	Valid to: (month/day/year)	
2. Foreign address: Street # and Name		Apt#
City or Town	State or Province	
Country	Zip or Postal Code	

Form I-539 (Rev. 12-2-91)

Continued on back.

FOR INS USE ONLY

Returned Date	Receipt
Resubmitted Date	
Reloc Sent Date	
Reloc Rec'd Date Date	
☐ Applicant Interviewed	

☐ *Extension Granted* to (date): ______

☐ *Change of Status/Extension Granted*
New Class: ______ To (date): ______

If denied:
☐ Still within period of stay
☐ V/D to: ______
☐ S/D to: ______
☐ Place under docket control

Remarks

Action Block

To Be Completed by
Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Part 4. Additional Information. *(continued)*

3. **Answer the following questions. If you answer yes to any question, explain on separate paper.**	Yes	No
a. Are you, or any other person included in this application, an applicant for an immigrant visa or adjustment of status to permanent residence?		
b. Has an immigrant petition ever been filed for you, or for any other person included in this application?		
c. Have you, or any other person included in this application ever been arrested or convicted of any criminal offense since last entering the U.S.?		
d. Have you, or any other person included in this application done anything which violated the terms of the nonimmigrant status you now hold?		
e. Are you, or any other person included in this application, now in exclusion or deportation proceedings?		
f. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?		

If you answered YES to question 3f, give the following information on a separate paper: Name of person, name of employer, address of employer, weekly income, and whether specifically authorized by INS.

If you answered NO to question 3f, fully describe how you are supporting yourself on a separate paper. Include the source and the amount and basis for any income.

Part 5. Signature. *Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.*

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print your name	Date

***Please Note:** If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied.*

Part 6. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date

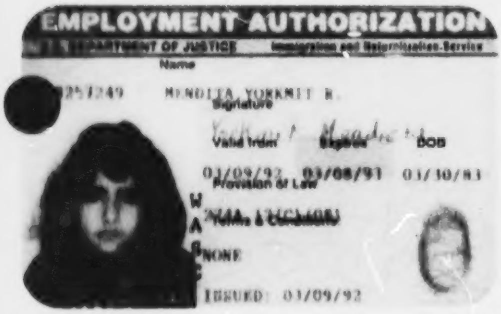
Firm Name
and Address

(Please remember to enclose the mailing label with your application)

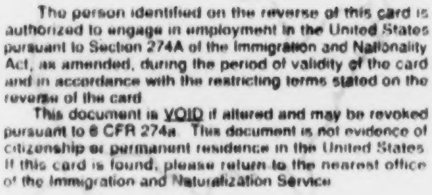
Supplement-1

Attach to Form I-539 when more than one person is included in the petition or application. *(List each person separately. Do not include the person you named on the form).*

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month/day/year)*	
Country where passport issued	Expiration Date (month/day/year)		

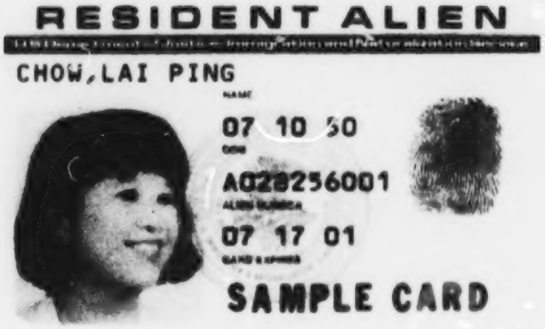


EMPLOYMENT AUTHORIZATION
U.S. DEPARTMENT OF JUSTICE Immigration and Naturalization Service
Name
[illegible]257249 MENDITA, YORKMIT R.
Signature
Valid from Expires DOB
01/09/92 03/08/93 03/10/83
Provision of Law
274A.12(C)(08)
Terms & Conditions
NONE
W
A
S
C
ISSUED: 01/09/92

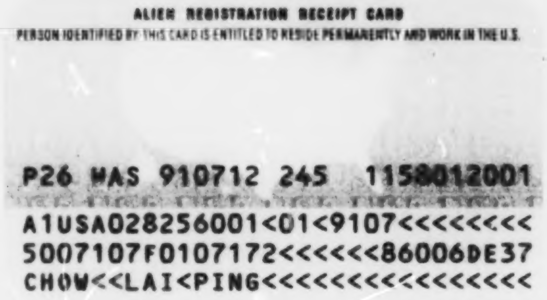


The person identified on the reverse of this card is authorized to engage in employment in the United States pursuant to Section 274A of the Immigration and Nationality Act, as amended, during the period of validity of the card and in accordance with the restricting terms stated on the reverse of the card.

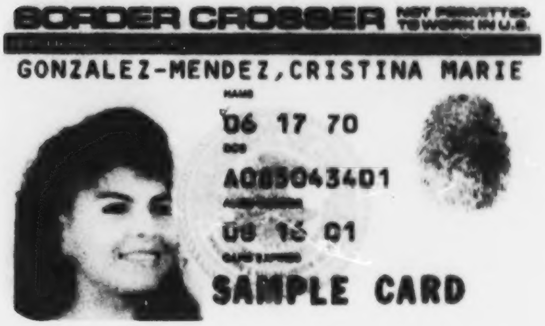
This document is VOID if altered and may be revoked pursuant to 8 CFR 274a. This document is not evidence of citizenship or permanent residence in the United States. If this card is found, please return to the nearest office of the Immigration and Naturalization Service.



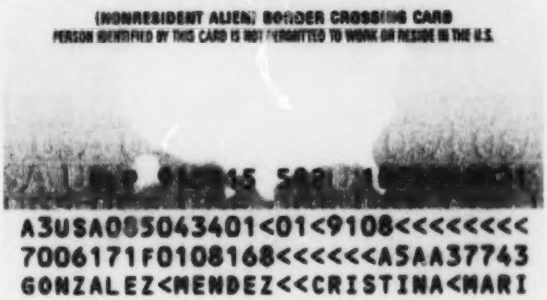
RESIDENT ALIEN
U.S. Department of Justice - Immigration and Naturalization Service
CHOW,LAI PING
NAME
07 10 50
DOB
A028256001
ALIEN NUMBER
07 17 01
CARD EXPIRES
SAMPLE CARD



ALIEN REGISTRATION RECEIPT CARD
PERSON IDENTIFIED BY THIS CARD IS ENTITLED TO RESIDE PERMANENTLY AND WORK IN THE U.S.
P26 WAS 910712 245 1158012001
A1USA028256001<01<9107<<<<<<<<
5007107F0107172<<<<<<86006DE37
CHOW<<LAI<PING<<<<<<<<<<<<<<<<



BORDER CROSSER NOT PERMITTED TO WORK IN U.S.
GONZALEZ-MENDEZ,CRISTINA MARIE
NAME
06 17 70
DOB
A085043401
ALIEN NUMBER
08 16 01
CARD EXPIRES
SAMPLE CARD



(NONRESIDENT ALIEN) BORDER CROSSING CARD
PERSON IDENTIFIED BY THIS CARD IS NOT PERMITTED TO WORK OR RESIDE IN THE U.S.
[illegible]
A3USA085043401<01<9108<<<<<<<<
7006171F0108168<<<<<<A5AA37743
GONZALEZ<MENDEZ<<CRISTINA<MARI

BEST COPY AVAILABLE

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-016
Application for Employment Authorization

Do Not Write In This Block | **Please Complete Both Sides of Form**

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 ______		

☐ Application Approved. Employment Authorized / Extended (Circle One) ______________ (Date).
until ______________ (Date).

Subject to the following conditions: ______________

☐ Application Denied.

☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).

☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (13) (14) (18) and 8 CFR 214.2(f)

I am applying for:
☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Extension of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship/Nationality

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (Month/Day/Year)

7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used)

10. Alien Registration Number (A-Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from INS?
☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)
Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to the Eligibility Section on the reverse of this form and check the box which applies to you. In the space below, place the letter and number of the box you selected from the reverse side:
Eligibility under 8 CFR 274a.12
( ) ( ) ( )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature Telephone Number Date

Signature of Person Preparing Form if Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

Form I-765 (Rev. 12 7 90) N Page 2

Eligibility

GROUP A

The current immigration laws and regulations permit certain classes of aliens to work in the United States. If you are an alien described below, you do not need to request that employment authorization be granted to you, but you do need to request a document to show that you are able to work in the United States. For aliens in classes (a) (3) through (a) (11), **NO FEE** will be required for the original card or for extension cards. A **FEE** will be required if a replacement employment authorization document is needed. A **FEE IS REQUIRED** for aliens in item (a) (12) who are over the age of 14 years and under the age of 65 years.

Place an X in the box next to the number which applies to you.

☐ **(a) (3)** - I have been admitted to the United States as a refugee.

☐ **(a) (4)** - I have been paroled into the United States as a refugee.

☐ **(a) (5)** - My application for asylum has been granted.

☐ **(a) (6)** - I am the fiance(e) of a United States citizen and I have K-1 nonimmigrant status; OR I am the dependent of a fiance(e) of a United States citizen and I have K-2 nonimmigrant status.

☐ **(a) (7)** - I have N-8 or N-9 nonimmigrant status in the United States.

☐ **(a) (8)** - I am a citizen of the Federated States of Micronesia or of the Marshall Islands.

☐ **(a) (10)** - I have been granted withholding of deportation.

☐ **(a) (11)** - I have been granted extended voluntary departure by the Attorney General.

☐ **(a) (12)** - I am an alien who has been registered for Temporary Protected Status (TPS) and I want an employment authorization document. **FEE REQUIRED**.

GROUP C

The immigration law and regulations allow certain aliens to apply for employment authorization. If you are an alien described in one of the classes below you may request employment authorization from the INS and, if granted, you will receive an employment authorization document. The instruction **FEE REQUIRED** printed below refers to your initial document, replacement, and extension.

Place an X in the box next to the number which applies to you.

☐ (c) (1) - I am the dependent of a foreign government official (A-1 or A-2). I have attached certification from the Department of State recommending employment. **NO FEE.**

☐ (c) (2) - I am the dependent of an employee of the Coordination Council of North American Affairs and I have E-1 nonimmigrant status. I have attached certification of my status from the American Institute of Taiwan. **FEE REQUIRED**.

☐ (c) (3) (i) - I am a foreign student (F-1). I have attached certification from the designated school official recommending employment for economic necessity. I have also attached my INS Form I-20 ID copy. **FEE REQUIRED**.

☐ (c) (3) (ii) - I am a foreign student (F-1). I have attached certification from the designated school official recommending employment for practical training. I have also attached my INS Form I-20 ID copy. **FEE REQUIRED**.

☐ (c) (3) (iii) - I am a foreign student (F-1). I have attached certification from my designated school official and I have been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act. I have certification from this sponsor and I have also attached my INS Form I-20 ID copy. **FEE REQUIRED**.

☐ (c) (4) - I am the dependent of an officer or employee of an international organization (G-1 or G-4). I have attached certification from the Department of State recommending employment. **NO FEE.**

☐ (c) (5) - I am the dependent of an exchange visitor and I have J-2 nonimmigrant status. **FEE REQUIRED.**

☐ (c) (6) - I am a vocational foreign student (M-1). I have attached certification from the designated school official recommending employment for practical training. I have also attached my INS Form I-20ID Copy. **FEE REQUIRED.**

☐ (c) (7) - I am the dependent of an individual classified as NATO-1 through NATO-7. **FEE REQUIRED.**

☐ (c) (8) - I have filed a non-frivolous application for asylum in the United States and the application is pending. **FEE REQUIRED FOR REPLACEMENT ONLY.**

☐ (c) (9) - I have filed an application for adjustment of status to lawful permanent resident status and the application is pending.
FEE REQUIRED.

☐ (c) (10) - I have filed an application for suspension of deporation and the application is still pending. **FEE REQUIRED.**

☐ (c) (11) - I have been paroled into the United States for emergent reasons or for reasons in the public interest. **FEE REQUIRED.**

☐ (c) (12) - I am a deportable alien and I have been granted voluntary departure either prior to or after my hearing before the immigration judge. **FEE REQUIRED.**

☐ (c) (13) - I have been placed in exclusion or deportation proceedings. I have not received a final order of deportation or exclusion and I have not been detained. **I understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

☐ (c) (14) - I have been granted deferred action by INS as an act of administrative convenience to the government. **I understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

☐ (c) (16) - I entered the United States prior to January 1, 1972 and have been here since January 1, 1972. I have applied for registry as a lawful permanent resident alien and my application is pending.
FEE REQUIRED.

☐ (c) (17) (i) - I am a (B-1) visitor for business. I am and have been (before coming to the United States) the domestic or personal servant for my employer who is temporarily in the United States.
FEE REQUIRED.

☐ (c) (17) (ii) - I am a visitor for business (B-1) and am the employee of a foreign airline. I have B-1 nonimmigrant classification because I am unable to obtain visa classification as a treaty trader (E-1). **FEE REQUIRED.**

☐ (c) (18) - I am a deportable alien who has been placed under an order of supervision (OS). **I Understand that I must show economic necessity and I will refer to the instructions concerning "Basic Criteria to Establish Economic Necessity." FEE REQUIRED.**

☐ (c) (19) - I am an alien who is prima facie eligible for Temporary Protected Status (TPS) and (1) INS has not given me a reasonable chance to register during the first 30 days of the registration period **[FEE REQUIRED]**, or (2) INS has not made a final decison as to my eligibility for TPS. **FEE REQUIRED.**

EPI-PET

UNITED STATES INFORMATION AGENCY
EXCHANGE VISITOR PROGRAM SERVICES
EXCHANGE VISITOR PROGRAM APPLICATION

FORM APPROVED OMB
No.3116-0210 (exp.3/96)
*Est. Burden Hrs: 1 Hr.

1. Name and Address of Sponsoring Organization

Serial No. (USIA USE) -

2. Name and Title of Responsible Officer

Telephone/Fax Number

3. Name and Title of Alternate Responsible Officer

Telephone Number

4. Type of Applicatio
(check one)
NEW
AMENDMENT ____
REDESIGNATION ____

SECTION I - PROGRAM PARTICIPANT DATA

5. Participation by Category (indicate total no. and approximate duration of participation in each category)

Type	No.	Dur.	Type	No.	Dur.	Type	No.	Dur.	Type	No.	Dur.
1. Student			3. Teacher			7. Gov't Visitor			11. Camp Counselo		
a) Coll/Univ			4. Professor			8. Research Schlr			12. Summer Wk/Trvl		
b) High School			5. Int'l Vstr			9. Short-Term Schlr					
2. Trainee			6. Alien Phys			10. Specialist					
a) Specialty			(See 22 CFR 514.2, 22 CFR 514.4, 22 CFR 514.20-30 for Definitions, Categories and Duration of Participation)								
b) Non-specialty											

6. Method of Selection and Arrangements for Financial Support of Exchange Visitor while in the U.S. (specify source and amount of funding, as appropriate)

SECTION II - PROGRAM DATA

7. Purpose or Objective

8. Outline of Proposed Activities (if Training, see reverse side)

9. Arrangements for Supervision

10. Role of Other Organizations Associated with Program (if any)

SECTION III - CERTIFICATION

11. Citizenship Certification of Organization and Responsible Officer (see reverse side)

12. I certify that the information given in this application is true to the best of my knowledge and belief and that I have completed appropriate information on reverse of this form, if applicable.

Date

Signature of Responsible Officer (also print name)

Date

Signature of Chief Executive Officer (also print name)
(CEO's signature also certifies that the Responsible Officer will be provided sufficient staff and resources to fulfill his/her duties and obligations on behalf of the sponsor.)

IAP-37 (04/93)

(See reverse side for instructions)

INSTRUCTIONS

If additional space is needed for answering any questions, use continuation sheets on plain white paper.

1-3. Names, address and telephone/fax numbers of organization.

4. Select type of application.

5. Select appropriate categories prior to filling out this data. (See 22 CFR 514.2, 22 CFR 514.4 and 22 CFR 514.20-30)

6-10. Complete information on program and program sponsor.

IF TRAINING PROGRAM, identify appropriate fields and specialties/non-specialties: 01-Arts & Culture; 02-Information Media and Communications; 03-Education, Social Sciences, Library Science, Counseling and Social Services; 04-Management, Business, Commerce and Finance; 05-Health Related Occupations; 06-Aviation; 07-The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations; 08-Construction and Building Trades; 09-Agriculture, Forestry and Fishing; 10-Public Administration and Law; 11-Other (Specify).

11-12. Certification. Citizenship for new applicants requires certification below (#7).

REDESIGNATION

If your organization is applying for redesignation please certify to the following:

I hereby certify that as an officer of the organization making application for an exchange program under 22 CFR 514.7 that the following documents which have been submitted to the United States Information Agency, Exchange Visitor Program Services, remain in effect and not altered in any way:

(1) Evidence of status as a legal entity, such as Articles of Incorporation and By Laws, and current certificate of good standing. Provide dates:________________________________.

(2) Evidence that sponsor is financially solvent.

(3) Evidence of accreditation if a post-secondary educational institution. Provide date, type of accreditation, and State of accreditation:________________________________.

(4) Evidence of licensing. Provide date, type of license, and State of license:____________________.

(5) Evidence of organization's tax-exempt status if applicable. Provide date:____________________.

(6) Program categories and activities in which the organization has been engaged have not changed since original designation dated:__________________________.

(7) Citizenship. Provide the date of compliance with citizenship requirements:____________________.

If citizenship compliance is not current, please complete the following:

(a) Organization: I hereby certify that I am an officer of this program with the title of [specify]; that I am authorized by the [specify] to sign this certification and bind [name of organization]; and that a true copy certified by the [specify] of such authorization is attached. I further certify that [name of organization] is a citizen of the United States as that term is defined at 22 CFR 514.2. (Name of organization) agrees that its inability to substantiate its representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

(b) Responsible Officer or Alternate Responsible Officer: I hereby certify that I am the responsible (or alternate) officer for this program, and that I am a citizen of the United States (or a person lawfully admitted to the United States for permanent residence). [Name of organization] agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it (22 CFR 514.2).

CERTIFICATION OF REQUIREMENTS 1-7 or if new application 7 only (above)

I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more that $10,000 or imprisoned not more than five years, or both."

Signed in ink by (Name)__________________________ (Print Name)__________________________

Title______________________________

Subscribed and sworn to before me this _____ day of ______________, 19___. Notary Public

USIA USE ONLY

Type of program:______________

Subtype if applicable:_________

No. Forms IAP-66:______________

Categories:____________________

Please return form to:

Exchange Visitor Program Services - GC/V
United States Information Agency
Washington, D.C. 20547

* Public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to USIA Clearance Officer, M/ASP, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

BEST COPY AVAILABLE

PLEASE DO NOT STAPLE THIS FORM

ASSURE THAT IMPRESSIONS ON
ALL COPIES ARE CLEAR

APPROVED OMB 3116-0008 EXP. 10/31/92
*Estimated Burden Hours: 15 mins. (See page 4).

United States Information Agency
EXCHANGE VISITOR FACILITATIVE STAFF GC/V
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS

D 328144

1 ______ (FAMILY NAME OF EXCHANGE VISITOR) (FIRST NAME) (MIDDLE NAME) ( ) Male ( ) Female

born ____ (Mo.) ____ (Day) ____ (Yr.) in ______ (City) ______ (Country)

a citizen of ______ (Country) ____ (Code) a legal permanent resident of ______ (Country) ____ (Code) whose position in that country is ______

______ ____ (Pos. Code)

U.S. address ______

THE PURPOSE OF THIS FORM IS TO

1 ( ) Begin a new program ( ) Accompanied by ____ immediate family members

2 ( ) Extend an on-going program

3 ( ) Transfer to a different program

4 ( ) Replace a lost form

5 ( ) Permit visitor's immediate family (____ members) to enter U.S. separately

2 will be sponsored by ______

______ to participate in Exchange Visitor Program No ____ - ____ ____ which is still valid and is officially described as follows

3 This form covers the period from ____ (Mo.) ____ (Day) ____ (Yr.) to ____ (Mo.) ____ (Day) ____ (Yr.) Students are permitted to travel abroad & maintain status (e.g. obtain a new visa) under duration of the program as indicated by the dates on this from.
If this form is for family travel or replaces a lost form, the expiration date on the exchange visitor's I-94 is ______

4 The category of this visitor is 1 ( ) Student, 2 ( ) Trainee, 3 ( ) Teacher, 4 ( ) Professor, Research Scholar or Specialist, 5 ( ) International Visitor, 6 ( ) Medical Trainee, 7 ( ) Alien employee of the USIA. The Specific field of study, research, training or professional activity is ______ (Sub/Field Code) verbally described as follows

5 During the period covered by this form, it is estimated that the following financial support (in U.S. $) will be provided to this exchange visitor by

a ( ) The Program Sponsor in item 2 above $ ______

This Program Sponsor has ☐ has not ☐ (check one) received funding for international exchange from one or more U.S. Government Agency(ies) to support this exchange visitor. If any U.S. Government Agency(ies) provided funding, indicate the Agency(ies) by code ___ ___ ___

Financial support from organizations other than the sponsor will be provided by one or more of the following

b1 ( ) U.S. Government Agency(ies) ______ (Agency Code) $ ______ b2 ______ (Agency Code) $ ______

c1 ( ) International Organization(s) ______ (Int. Org. Code) $ ______ c2 ______ (Int. Org. Code) $ ______

d ( ) The Exchange Visitor's Government $ ______

e ( ) The binational Commission of the visitor's Country $ ______

f ( ) All other organizations providing support $ ______

g ( ) Personal funds $ ______

(If necessary, use above spaces for funding by multiple U.S. Agencies or Intl. Organizations)

6 I.N.S. USE

7 ______ (Name of Official Preparing Form) (Title)

______ (Address)

______ (Signature of Responsible Officer or Alternate R.O.) (Date)

PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212 (e) OF THE I.N.S.

I (Name) ______

(Title) ______

have determined that this alien in the above program

1 ( ) is not subject to the two year residence requirement
2 ( ) is subject based on — A ( ) government financing and/or
B ( ) the Exchange visitor skills list and/or
C ( ) PL 94 484 as amended

The United States Information Agency reserves the right to make the final determination

______ (Signature of Officer) (Date)

8. STATEMENT OF RESPONSIBLE OFFICER FOR RELEASING SPONSOR (FOR TRANSFER OF PROGRAM)

Date ______. Transfer of this exchange visitor from program No ______ sponsored by ______ to the program specified in item (2) is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961

______ (Signature of Officer) (Date)

IAP-66 (12-90) Copy 1 - For Immigration and Naturalization Service

INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form.

Read and complete this page prior to presentation to a United States consular or immigration official.

1. I understand that the following conditions are applicable to exchange visitors.

(a) *Extension of Stay and Program Transfers.* A completed form IAP-66 is required in order to apply for an extension or transfer and may be obtained from or with the assistance of the sponsor. It must be sumitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.

(b) *Limitation on Stay:* STUDENTS -as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. Students for whom the sponsor recommends practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate. BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. MEDICAL TRAINEES: Graduate Nurses : 2 years. Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and other participants in similar categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years. Medical Interns and Residents - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if such extension is approved by the Director of the United States Information Agency.

(c) *Documentation Required for Admission or Readmission as an Exchange Visitor.* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements, (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements, (3) A properly executed Form IAP-66. Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States. Copy three may be retained for re-entries within a period of previously authorized stay.

(d) *Change of Status.* Exchange visitors are expected to leave the United States upon completing their objective. An exchange visitor who is subject to the two-year home-country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees.

(e) *Two-Year Home Country Physical Presence Requirement.* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L"). Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home-country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 212(e) of the Immigration and Nationality Act and PL 94-484, as amended).

2. **I seek to enter into, or remain temporarily in, the United States as an exchange visitor under Section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, for a total maximum stay of ________________ *(months or years)* for the purpose of (state type of degree, certificate, or other objective toward which your program participation will be directed. Doctors of medicine should indicate their medical specialty): ____**

____,

and I understand that I shall be permitted to perform only those activities described in Item 2 and 4 on page 1 of this Form.

I intend to return to (country) ________________________ where I am (check one) ☐ legal permanent resident ☐ citizen.

3. **My passport numbered ________________ issued by ________________ *(Country)* expires on ____________ ________________ *(Mo./Day/Yr.)***

4. **I ☐ have ☐ have not *(check one)* been in the United States previously as an exchange visitor. (If you have been in the United States previously as an exchange visitor, show total length of time: __________, and dates: ________________________):**

5. **(To be completed only if application is being made for extension of stay or Program transfer. Use a continuation sheet if necessary.) I first entered the United States as an exchange visitor, or acquired exchange visitor status, on ______________ *(Mo./Day/Yr.)* and have engaged in the following activities under the sponsorship of respective institutions listed for each activity *(include program numbers)***

____

____

6. **I understand that a consular or Immigration Officer will make a preliminary determination on whether I am subject to the two year home country physical present requirement described in item 1(e) above. The United States Information Agency reserves the right to make a final determination. When determined subject, I will accept that determination and comply with the requirement.**

7. **I certify that I have read and I understand the foregoing.**

________________________	________________________	________________________
(Signature of Applicant)	***(Place)***	***(Date Mo. Day. Yr.)***

BEST COPY AVAILABLE

INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form:

Read and complete this page prior to presentation to a United States consular or immigration official.

I I understand that the following conditions are applicable to exchange visitors

(a) ***Extension of Stay and Program Transfers.*** **A completed form IAP-66 is required in order to effect an extension or transfer and may be obtained from or with the assistance of the sponsor. It must be submitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.**

(b) ***Limitation on Stay:*** **STUDENTS -as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. Students for whom the sponsor recommends practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate. BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. MEDICAL TRAINEES: Graduate Nurses - 2 years. Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and other participants in similar categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years. Medical Interns and Residents - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if such extension is approved by the Director of the United States Information Agency.**

(c) *Documentation Required for Admission or Readmission as an Exchange Visitor* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements, (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements, (3) A properly executed Form IAP-66 Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States Copy three may be retained for re entries within a period of previously authorized stay

(d) *Change of Status* Exchange visitors are expected to leave the United States upon completing their objective An exchange visitor who is subject to the two year home country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees

(e) *Two-Year Home Country Physical Presence Requirement:* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L"). Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 212(e) of the Immigration and Nationality Act and PL 94-484, as amended)

(Signature of Applicant) *(Place)* *(Date Mo. Day Yr.)*

IAP-66 (12-85)

NOTICE TO ALL EXCHANGE VISITORS

To facilitate your readmission to the United States after a visit to another country other than a contiguous territory or adjacent islands you should have the Responsible Officer of your sponsoring organization indicate that you continue to be in good standing on this copy of the IAP-66 form.

VALIDATION BY RESPONSIBLE OFFICER

(1) Exchange visitor is in good standing from ____________ **to** ____________

Signature of Responsible Officer

(2) Exchange visitor is in good standing from ____________ **to** ____________

Signature of Responsible Officer

(3) Exchange visitor is in good standing from ____________ **to** ____________

Signature of Responsible Officer

(4) Exchange visitor is in good standing from ____________ **to** ____________

Signature of Responsible Officer

(5) Exchange visitor is in good standing from ____________ **to** ____________

Signature of Responsible Officer

INSTRUCTIONS FOR PROGRAM SPONSOR

PROHIBITIONS

1) No one except the Responsible Officer or Alternate Responsible Officer, whose name is recorded with the United States Information Agency, may sign this form

2) Authorized exchange visitor program sponsors may not transfer forms IAP-66 to any other organization, whether or not that organization has an authorized exchange visitor program

PROCEDURES

Give copies 1, 2, and 3 (white, yellow and pink) to the exchange visitor for him/her to use in applying for a "J" visa or in applying to the INS for an extension or transfer. If the IAP-66 is to replace a lost form, destroy copies 1 and 2 and give copy 3 to the exchange visitor, being sure to fill in block 3, the expiration date of the visitor's I-94

EXCHANGE VISITOR FAMILY MEMBERS

If the Exchange Visitor's immediate family members will accompany him/her to the United States or if they will remain in the U S at the time the Exchange Visitor extends or transfers his/her program, attach a list (on the Sponsor's letterhead) giving the names, relationships to the Exchange Visitor, and dates and place of birth of the family members. If this form is for the Visitor's family travel attach a similar list

PURPOSE OF FORM (Upper right hand corner)
NEW PROGRAM Check this box for an individual who is beginning an Exchange Visitor Program and who is not now an Exchange Visitor in this or any other Exchange Visitor Program. Check box if Exchange Visitor is accompanied by his immediate family members, enter number of dependents

EXTEND AN ONGOING PROGRAM Check this box for an Exchange Visitor who is continuing in the same Exchange Visitor Program

TRANSFER TO A DIFFERENT PROGRAM Check this box for an Exchange Visitor who is transferring from one Program Sponsor to another. Do not use for change of activity or subject under the same Exchange Visitor Program Number

LOST FORM Check this box when the form is being issued to replace a pink copy of the IAP-66 lost by the Exchange Visitor. Note the I-94 expiration date requirement in item 3

VISITOR'S FAMILY TRAVEL Check this box when the form is to be used by the Exchange Visitor's immediate family (indicate number of dependents) in order to travel separately from the Visitor. Note the I-94 expiration date requirement in block 3

Block 1 Fill in the FAMILY NAME first. Use numerals for the BIRTH DATE, in the order Month, Day, Year, e g *07 22 39*. Province, prefecture, township, district, etc , may be used in place of CITY OF BIRTH where local custom or regulation requires, followed by COUNTRY OF BIRTH. LEGAL PERMANENT RESIDENT is a phrase used to distinguish country of intended permanent residence from country of birth and/or citizenship in those few cases where permanent residence and citizenship are different. In most cases, the country of citizenship and the country of permanent residence are the same. Exchange Visitors are subject to the Skills List and two-year foreign residence requirement in the country of permanent residence if that is different from the country of citizenship and/or birth. POSITION IN THAT COUNTRY is the position or location of the Exchange Visitor in the economy/society of his/her country of permanent residence prior to becoming an Exchange Visitor. U S ADDRESS If the Visitor has a residence address in the U S , use that address. If not, use the address of the institution where the Visitor will carry out his/her program or the address of the Program Sponsor

Block 2 Write the PROGRAM SPONSOR'S NAME on the first line. The PROGRAM NUMBER consists of three parts, separated by dashes. The first is either "G" or "P", followed by a one-digit number (do not use Roman numerals), followed by a number from 1 to 4 digits. In the space below enter the entire PROGRAM DESCRIPTION as recorded by the United States Information Agency. This description may be pre-printed or entered with a rubber stamp if all copies are legible. Program number example P-3-230

Block 3 Enter the Dates of the Program covered by this IAP-66 (duration of acceptance). Use numerals for the date as you did for the date of birth.* The Immigration & Naturalization Service grants admission into, and extensions of stay in, the United States in periods of maxima. Although everyone will be admitted for "duration of status", each individual exchange visitor will have an IAP-66 form giving a period of acceptance indicating the period the Sponsoring organization is willing to accept the Exchange Visitor. Should the Exchange Visitor need to stay in the U S beyond that date a new IAP (checked to extend) would need to be issued by the sponsor indicating a further period of acceptance for the Exchange Visitor. If this form is for the Visitor's family travel or to replace a lost form enter the expiration date which appears on the Exchange Visitor's form I-94

Block 4 Definitions of VISITOR CATEGORIES will be found in *Codes for Educational and Cultural Exchange*. Below the visitor category enter the SUBJECT/FIELD code which most closely describes the principal activity to be engaged in by the visitor. Finally, describe in your own words the activity which you have coded. Be specific in your descriptions

Block 5 Indicate the total amount of FUNDS to be supplied by the various sources during the period of validity of this form. Do not make entries such as "$450 per month", rather enter the totals for the period. Any funds supplied to the exchange visitor by the program sponsor should be listed in the first line, even though the sponsor may belong to one of the categories listed in subsequent lines. If the sponsor commingles funds received from other sources and cannot identify specific amounts in an individual's program, enter all those funds in the first line. Then check the appropriate category below and enter "unknown" on the amount line for that category. See additional instructions in *Codes for Educational and Cultural Exchange* (Pg 6 block 5)

Block 6 Do not write in block 6

Block 7 Fill in the name and business address of the OFFICIAL SIGNING THE FORM and the date of execution. That official must be the Responsible Officer or an Alternate Responsible Officer of the program described in block 2 above

Block 8 The Responsible Officer or alternate should fill in this block to indicate approval of a transfer of an Exchange Visitor from his/her program to the program of another sponsor (i e , to another program number)

The codes required to execute the IAP-66 will be found in the publication *Codes for Educational and Cultural Exchange*, which can be obtained from the Exchange Visitor Facilitative Staff, General Counsel, United States Information Agency, Washington, D C 20547

*Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to M/ASP, U S Information Agency, 301 4th St , S W , Washington, D C 20547, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D C 20503

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United States Information Agency
EXCHANGE VISITOR PROGRAM SERVICES
UPDATE OF INFORMATION ON EXCHANGE VISITOR PROGRAM SPONSOR

FORM APPROVED OMB
No. 3116-0210 (3/31/96)
*EST. BURDEN: 20 MINS.

Please amend the United States Information Agency records for Exchange Visitor Program Number___-___-______
assigned to ______________________________ as follows:
(Name of institution/organization)

1. Change the name of the program Sponsor from the above to____________________
(New Articles of Incorporation designating legal name change must be submitted with request.)

2. Change the address of the Program Sponsor

From:
(city) (state) (zip)

To:
(city) (state) (zip)

3. ( ) Change the telephone number from________________ to ________________

( ) Change the fax number from ________________ to ________________

4. ( ) Change the Responsible Officer of the above program from________________
to________________

5. a. Delete the following Alternate Responsible Officer:

5. b. Add the following Alternate Responsible Officer:

Citizenship is required for all Responsible and Alternate Responsible Officers, see reverse side

6. ( ) Send ______ (indicate number) IAP-66 Forms. (PLEASE ALLOW FOUR TO SIX WEEKS FOR RESPONSE)

7. ( ) Send ______ copies of this form.

8. ( ) Send ______ copies of Codes for Educational and Cultural Exchange.

9. ( ) Cancel the above named exchange visitor program (designated program sponsor).

(Signature of Responsible or Alternate Responsible Officer)

(Print Name)

(Title of Signing Officer)

(Date)

IAP-87

(See reverse side for instructions)

INSTRUCTIONS

The United States Information Agency records on Exchange Visitor Program Sponsors must be up-to-date. From time to time, lists of Program Sponsors, their addresses, and names of personnel authorized to sign IAP-66 forms (Responsible Officers and their alternates) are provided to U.S. Consuls and Immigration Officers so that they may verify the validity of IAP-66 forms presented to them. If records are not up-to-date, it is possible that a U.S. Consul or Immigration Officer might refuse to accept an IAP-66.

THIS FORM SHOULD BE FILLED OUT AS FOLLOWS

Enter the program number as it appears in the United States Information Agency records, followed by the name of the institution/organization as it is currently recorded. (Do not use Roman Numerals in the Program Number).

1-4. Enter any appropriate changes of program address, telephone number, fax number, and/or Responsible Officer.

5. Enter any change in Alternate Responsible Officer. (Indicate name of previous Alternate Responsible Officer, if replacing).

PLEASE INCLUDE CITIZENSHIP CERTIFICATION BELOW FOR ALL RESPONSIBLE AND ALTERNATE RESPONSIBLE OFFICERS

I hereby certify that I am the responsible officer [or alternate responsible officer, specify] for exchange visitor program [specify program number], and that I am a citizen of the United States [or a person lawfully admitted to the United States for permanent residence]. [Name of Program Sponsor] agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and the immediate return of, or accounting for, all IAP-66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by (Name)________________________ (Print Name)____________________________

Title____

Subscribed and sworn to me before me this _______day of _________________19____. Notary Public

6. If you wish to receive a supply of IAP-66 forms, indicate the number of forms. If an increase in program levels is requested, please provide a letter of explanation for the increase.

7-8. Indicate the number of additional copies of this form or Codes for Educational and Cultural Exchange requested.

9. If you desire, you may request that the Exchange Visitor Program indicated on this form be cancelled. (Cancellation of an Exchange Visitor Program by the sponsor will not preclude the establishment of a new program at a later date.)

Please return form to:
Exchange Visitor Program Services-GC/V
United States Information Agency
Washington, D.C. 20547

NOTE: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB no. 3116-0011) is estimated to average 20 minutes/hours per response, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USIA Clearance Officer, M/ASP, U.S. Information Agency 301 4th Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB Approval No. 44-R1301

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001).

PART A. OFFER OF EMPLOYMENT

1. Name of Alien *(Family name in capital letter, First, Middle, Maiden)*	
2. Present Address of Alien *(Number, Street, City and Town, State ZIP Code or Province, Country)*	3. Type of Visa *(If in U.S.)*

The following information is submitted as evidence of an offer of employment.

4. Name of Employer *(Full name of organization)*	5. Telephone *(Area Code and Number)*
6. Address *(Number, Street, City or Town, Country, State, ZIP Code)*	
7. Address Where Alien Will Work *(if different from item 6)*	

8. Nature of Employer's Business Activity	9. Name of Job Title	10. Total Hours Per Week		11. Work Schedule *(Hourly)*	12. Rate of Pay	
		a. Basic	b. Overtime		a. Basic	b. Overtime
				a.m. p.m.	$. per	$ per hour

13. Describe Fully the Job to be Performed *(Duties)*

14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above.

EDU-CATION *(Enter number of years)*	Grade School	High School	College			College Degree Required *(specify)* Major Field of Study
TRAIN-ING	No. Yrs.		No. Mos.			Type of Training
EXPERI-ENCE	Job Offered		Related Occupation			Related Occupation *(specify)*
	Number					
	Yrs.	Mos.	Yrs.	Mos.		

15. Other Special Requirements

16. Occupational Title of Person Who Will Be Allen's Immediate Supervisor ➤

17. Number of Employees Alien will Supervise ➤

◄ **ENDORSEMENTS** *(Make no entry in section - for government use only)*

Date Forms Received	
L.O.	S.O.
R.O.	N.O.
Ind. Code	Occ. Code
Occ. Title	

Replaces MA 7-50A, B and C (Apr. 1970 edition) which is obsolete.

ETA 750 (Oct. 1979)

18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY			19. IF JOB IS UNIONIZED *(Complete)*	
a. No. of Openings To Be Filled By Aliens Under Job Offer	b. Exact Dates You Expect To Employ Alien		a. Number of Local	b. Name of Local
	From	To		c. City and State

20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS *(Complete for Private Household Job ONLY)*						
a. Description of Residence		b. No. Persons Residing at Place of Employment				c. Will free board and private room not shared with anyone be provided?
("X" one)	Number of Rooms	Adults		Children	Ages	*("X" one)*
☐ House			BOYS			☐ YES ☐ NO
☐ Apartment			GIRLS			

21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. *(Specify Sources of Recruitment by Name)*

22. **Applications require various types of documentation. Please read PART II of the instructions to assure that appropriate supporting documentation is included with your application.**

23. EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment.

a. I have enough funds available to pay the wage or salary offered the alien.

b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly or monthly basis.

d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.

e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

f. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage.

(2) At issue in a labor dispute involving a work stoppage.

g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

h. The job opportunity has been and is clearly open to any qualified U.S. worker.

24. DECLARATIONS

DECLARATION OF EMPLOYER ➤ *Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*

SIGNATURE	DATE
NAME *(Type or Print)*	TITLE

AUTHORIZATION OF AGENT OF EMPLOYER ➤ *I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent.*

SIGNATURE OF EMPLOYER	DATE
NAME OF AGENT *(Type or Print)*	ADDRESS OF AGENT *(Number, Street, City, State, ZIP Code)*

PART B. STATEMENT OF QUALIFICATIONS OF ALIEN

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: *If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.*

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM.

Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a seperate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

1. Name of Alien *(Family name in capital letters)* — *First name* — *Middle name* — *Maiden name*

2. Present Address *(No., Street, City or Town, State or Province and ZIP Code* — Country

3. Type of Visa *(If in U.S.)*

4. Alien's Birthdate *(Month, Day, Year)*

5. Birthplace *(City or Town, State or Province)* — Country

6. Present Nationality or Citizenship *(Country)*

7. Address in United States Where Alien Will Reside

8. Name and Address of Prospective Employer if Alien has job offer in U.S.

9. Occupation in which Alien is Seeking Work

10. "X" the appropriate box below and furnish the information required for the box marked

a. ☐ Alien will apply for a visa abroad at the American Consulate in → City in Foreign Country — Foreign Country

b. ☐ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at → City — State

11. Names and Addresses of Schools, Colleges and Universities Attended *(Include trade or vocational training facilities)*	Field of Study	FROM		TO		Degrees or Certificates Received
		Month	Year	Month	Year	

SPECIAL QUALIFICATIONS AND SKILLS

12. Additional Qualifications and Skills Alien Possesses and Proficiency in the use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9.

13. List Licenses *(Professional, journeyman, etc.)*

14. List Documents Attached Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience, and Abilities Represented

Endorsements

(Make no entry in this section — FOR Government Agency USE ONLY)

DATE REC. DOL

O.T. & C.

(Items continued on next page)

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15. WORK EXPERIENCE. *List all jobs held during past three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.*

a. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAILS THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK
b. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK
c. NAME AND ADDRESS OF EMPLOYER			
NAME OF JOB	DATE STARTED *Month* *Year*	DATE LEFT *Month* *Year*	KIND OF BUSINESS
DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES, OR EQUIPMENT			NO. OF HOURS PER WEEK

16. DECLARATIONS

DECLARATION OF ALIEN ➤➤	*Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*
SIGNATURE OF ALIEN	DATE
AUTHORIZATION OF AGENT OF ALIEN ➤➤	*I hereby designate the agent below to represent me for the purposes of labor certification and I take full responsibility for accuracy of any representations made by my agent.*
SIGNATURE OF ALIEN	DATE
NAME OF AGENT *(Type or print)*	ADDRESS OF AGENT *(No., Street, City, State, ZIP Code)*

Health Care Facility Attestation (H-1A)

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Name of Facility (Full Legal Name of Organization)

3. Telephone (Area Code and Number)

OMB Approval No.: 1205-0305
Expires: 11/91

2. Address (Number, Street, City or Town, State and Zip Code)

4. Facility's Federal Employer I.D. Number

5. Nature of Facility's Business Activity

6. Name of Chief Executive Officer

7. Kind of Facility (check appropriate item)

☐ a. Nurse contractor intending to petition for H-1A nurses. (Also complete Item 8.g.)
☐ b. Other Facility intending to petition for H-1A nurses.
☐ c. Facility intending to use H-1A nurses through a contractor only (check appropriate item; waivers of some of the elements in Item 8 may be requested, in writing, if Item 7.c.(i), 7.c.(ii), or 7.c.(iii) is checked; see the instructions for Items 7. and 8.)
  ☐ (i) For no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis.
  ☐ (ii) For more than 15 but no more than 60 workdays in any 3-month period to meet temporary needs.
  ☐ (iii) For more than 60 workdays in any 3-month period due to a bona fide medical emergency. Describe on an attached sheet; see instructions.
  ☐ (iv) None of the above.

8. FACILITY ATTESTATION: Applicable in its entirety if Item 7.a. or Item 7.b. is checked. Item 8.g. required if Item 7.a. is checked.

☐ a. (i) This facility has not laid off any registered nurses within the past year; and
☐ (ii) Through no fault of this facility, there would be a substantial disruption in the delivery of health care services of the facility without the services of a nonimmigrant nurse(s), as demonstrated by (check one or more appropriate items):
  ☐ Current nurse vacancy rate of seven percent or more.
  ☐ Unutilized bed rate of seven percent or more.
  ☐ Elimination/Curtailment of essential health care services.
  ☐ Inability to implement established plans for needed new health care services.
  ☐ Other (Describe on an attached sheet; see instructions).

☐ b. The employment of the alien(s) will not adversely affect the wages and working conditions of registered nurses similarly employed.
☐ c. Alien(s) employed by the facility will be paid the wage rate for registered nurses similarly employed by this facility.
☐ d. (i) Check appropriate item:
  ☐ This facility has taken and is taking timely and significant steps designed to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services in order to remove as quickly as reasonably possible our dependence on nonimmigrant nurses; or
  ☐ This facility is subject to an approved State plan for the recruitment and retention of nurses. (If checked, skip Item 8.d.(ii).)

(NOTE: 8. FACILITY ATTESTATION CONTINUES ON THE BACK OF THIS FORM.)

9. DECLARATION OF FACILITY:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct

Signature of Chief Executive Officer

Date

FOR GOVERNMENT AGENCY USE ONLY:

By virtue of my signature below, I acknowledge that this attestation is accepted for filing on ____________________ (date) and will be valid through ____________________ (date twelve months from the date it is accepted for filing).

Signature of Authorized Department of Labor Official

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average ____ minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0305) Washington, D.C. 20503.

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(8. FACILITY ATTESTATION CONTINUATION)

(ii) Timely and significant steps being taken by this facility include (Check two or more unless second step is unreasonable; see item 8.d.(iii) and instructions).

☐ Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.
☐ Providing career development programs and other methods of facilitating health care workers to become registered nurses.
☐ Paying registered nurses at a rate higher than currently being paid registered nurses similarly employed in the geographic area.
☐ Providing adequate support services to free registered nurses from administrative and other nonnursing duties.
☐ Providing reasonable opportunities for meaningful salary advancement by registered nurses.
☐ Other (Describe on an attached sheet; see instructions.)

(iii) Only one timely and significant step has been and is being taken by this facility. (Check item below and attach explanation; see instructions.)

☐ Taking a second step is unreasonable.

(iv) Alternative to criteria for each step for second and succeding years. (Check item below and attach explanation; see instructions).

☐ This facility does not have a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided.

☐ This facility has a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided.

☐ Pursuant to its prior attestation, this facility has reduced the number of nonimmigrant nurses it utilizes by 10 percent within one year of the date of such prior attestation, without reducing the quality or quantity of services provided.

e. There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of this facility.

f. A copy of this attestation and supporting documentation are available at this facility for examination by interested parties. Copies of all visa petitions filed by the facility with INS for H-1A nurses will also be available for examination at this facility. The facility will make this attestation, including supporting documentation and other records available to officials of the Department of Labor upon request during any investigation upon this attestation.

CHECK APPROPRIATE ITEM:

☐ (i) Notice of this filing has been provided to the bargaining representative of the registered nurses at this facility; or
☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to registered nurses employed at this facility through posting in conspicuous locations.

g. For nurse contractors only.

☐ (i) H-1A nurses shall be referred only to facilities which themselves have valid and current attestations.
☐ (ii) This employer maintains copies of the valid attestation (Form ETA 9029) from each facility where its H-1A nurses are working.

INSTRUCTIONS FOR COMPLETING FORM ETA 9029

HEALTH CARE FACILITY ATTESTATION (H-1A)

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Submit the completed original Form ETA 9029 along with two copies of the form and all attachments to: Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, N.W., Room N-4456, Washington, D.C. 20210. If this attestation is used to support a visa petition for one or more H-1A nurses, a copy of that petition must be filed at the same address.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions of 20 CFR Part 655, Subparts D and E, and at 29 CFR Part 504, Subparts D and E.

Item 1. Name of Facility. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Facility. Self explanatory.

Item 3. Telephone Number. For private households, enter a business and home telephone number when all adults are employed.

Item 4. Facility's Federal Employer I.D. Number. Enter the facility's federal employer identification number assigned by the Internal Revenue Service.

Item 5. Nature of Facility's Business Activity. Enter a brief, non-technical description, *e.g.*, acute care, long-term care, nursing contractor.

Item 6. Name of Chief Executive Officer. Self explanatory.

Item 7. Kind of Facility. A facility intending to use H-1A nurses through a contractor only must check the applicable box under Item 7.c. and may request, in writing on an attached sheet,a waiver of certain attestation elements (see §__.310(k) of the regulations. See instructions to Item 8. Waiver requests must include an estimate of the maximum number of workdays of H-1A contract nurse services the facility intends to use in any 3-month period. A workday consist of one H-1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H-1A contract nurses to total 15 workdays.

A facility intending to use H-1A nurses through a contractor for no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis may request, in writing, a waiver of Item 8.a (substantial disruption; layoffs), Item 8.b (adverse effect), and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for no more than 60 workdays in any 3-month period to meet temporary needs may request, in writing, a waiver of Item 8.a(ii) (substantial disruption, but not layoff under Item 8.a(i)) and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for more than 60 workdays in any 3-month period may request, in writing, a waiver of Item 8.d (timely and significant steps; or State plan) due to a bona fide medical emergency. As part of the request for waiver, the facility must attach an explanation documenting the bona fide medical emergency. "Bona fide medical emergency" means a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

A worksite facility which uses H-1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation if it intends to use (or subsequently intends to use) such attestation as a basis for itself filing a visa petition for an H-1A nurse. Thus, a worksite facility should consider its future needs for H-1A nurses in filing attestations and requests for waiver (see §__.310(k) of the regulations).

Item 8. Facility Attestation. In order to be eligible to hire nonimmigrant alien (H-1A) nurses, a facility must attest to the conditions listed in elements (a) through (g). A facility requesting a waiver, in writing, of any attestation element (see §__.310(k) of the regulations) may obtain the services of an H-1A nurse by contracting with a nurse contractor but will not be eligible to itself employ any H-1A nurses under this attestation. The attestation cannot be accepted for filing if the required explanations or information supporting these elements are not attached to the Form ETA 9029. See § __.310(c) through (k) of the regulations for guidance on the supporting information that must be attached to the Form ETA 9029.

Item 8.a(i). No Layoffs. Layoff means any involuntary separation of nurses without cause or prejudice. If nurses are separated from one specialized activity and offered retraining and retention at the same facility in another activity at the same wage and status, but refuse, it is not a layoff. If the position is covered by a collective bargaining agreement, the agreement's definition of "layoff" (if any) shall apply to that position.

Item 8.a.(ii). (A waiver of this item may be requested, in writing on an attached sheet, if Item 7.c.(i) or Item 7.c.(ii) is checked.) Substantial Disruption. A facility may attest that substantial disruption in the delivery of its health care services without nonimmigrant nurses is demonstrated by one or more of the specific circumstances listed. To make such an attestation, a facility must check the appropriate Item(s) and attach brief explanatory information as to the circumstances and the nature and location of supporting documentation (see §§ __.310(d)(2)(i) and _____.310(d)(3) of the regulations). If a facility finds that the listed circumstances are inapplicable or cannot be demonstrated, the facility may make an attestation of substantial disruption in the delivery of the facility's health care services by checking the "Other" Item and attaching a clear explanation and such documentation as demonstrates the substantial disruption (see §§ __.310(d)(2)(ii) and __.310(d)(3) of the regulations).

Item 8.b. No Adverse Effect. A waiver of this item may be requested, in writing, if Item 7.c.(i) is checked.

Item 8.c. Facility/Employer Wage. This is not applicable if Item 7.c. is checked.

Item 8.d. Timely and Significant Step. A waiver of this item may be requested, in writing, if Item 7.c.(i), Item 7.c.(ii) or Item 7.c.(iii) is requested.

Item 8.d.(ii). Timely and Significant Steps. A facility may attest that it has taken and is taking one or more of the listed timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses. To make such an attestation, a facility must check the appropriate Item(s) and attach a brief explanation of how the facility's program(s) meet the requirements of the step(s) (see § __.310(g)(1)(i)(A) of the regulations). The five steps listed on the form are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other steps, that are of comparable timeliness and significance. A facility choosing to take step(s) other than the five listed steps must make its attestation by checking the "Other" Item and attaching an explanation of the nature and scope of the step(s) taken, how the step(s) are effected, and how the step(s) meet the statutory test of timeliness and significance comparable to the listed steps. Examples of such other steps which may be considered to be of comparable timeliness and significance, depending upon all of the circumstances, are monetary incentives, special perquisites, work schedule options, and other training options. See § __.310(g)(1)(i)(B) of the regulations.

Item 8.d.(iii). Unreasonableness of second step. The listed steps are not an exclusive list of the significant steps that may be taken to meet the requirements of the Act. Nothing shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. To make an attestation that taking a second step would be unreasonable, a facility must check the appropriate Item and attach an explanation of why such a step would be unreasonable. The taking of a second step may be considered unreasonable, if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or the provision of nursing services would otherwise be jeopardized by the taking of such a step. For any of the five listed steps not taken, the facility's explanation shall demonstrate, with respect to each of the listed steps not taken, why it would be unreasonable for the facility to take such step. Such facility also shall explain why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. See § __.310(g)(1)(ii).

Item 8.d.(iv). Alternative to criteria for each specific step after the first year of attestation. In order to avoid the necessity of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include with its Form ETA 9029, in addition to the actions taken under Items 8.d.(ii) and (iii), an attestation that it shall reduce the number of nonimmigrant alien (H-1 and H-1A visaholders) nurses it uses one year from the date of attestation by at least 10 percent. This shall be achieved without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and indicated in its subsequent year's Form ETA 9029), the facility's subsequent year's Form ETA 9029 may simply include an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of nonimmigrant alien (H-1A) nurses it uses one year from the date of attestation by at least 10 percent.

Item 9. Declaration of Facility. One copy of this form must bear the original signature of the chief executive officer of the facility (or the chief executive officer's designee). By signing this form the chief executive officer is attesting to Item 7 and Item 8 on the Form ETA 9029 and to the accuracy of the information provided in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and attached explanations for all items except Item 7.c.(iii) "Bona Fide Medical Emergency", Item 8.a.(ii) "Other," Item 8.d.(ii) "Other," and Item 8.d(iii), and if for those three items the Department of Labor determines after review that the attached explanations are sufficient to demonstrate compliance with the regulatory standards, the Department of Labor shall accept the attestation for filing and shall document such acceptance on the original and two copies of Form ETA 9029's submitted. A copy of the attestation form indicating the Department's acceptance will be returned to the health care facility. The facility may then file a visa petition with INS for temporary nonimmigrant nurses in accordance with INS regulations. The facility shall include a copy of the Form ETA 9029 with each visa petition filed with the Immigration and Naturalization Service.

A copy of this attestation, along with any supporting documentation and visa petitions, will be available for public inspection in the United States Employment Service's Public Disclosure Room in Room N-4456, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Attestation by Employers For Off-Campus Work Authorization for F-1 Students

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No. 1205-0315
Expiration Date: 04/30/92

PART A: OFFER OF EMPLOYMENT

1. Employer (Full Legal Name of Employer)

3. Telephone Number (Area Code and Number)

2. Address (No., Street, City, State and ZIP Code)

4. Federal Employer I.D. Number

5. Occupational Information (Continue on reverse side if necessary)

a. Titles of Jobs to be Filled by F-1 Students	b. Two Digit Occupational Division	c. Rate of Pay	d. Location(s) Where Alien(s) Will Work (see instructions)
		$ per	
		$ per	
		$ per	
		$ per	

PART B: EMPLOYER ATTESTATIONS

6. Recruitment Attestation.

a. Recruitment for the position(s) identified in this attestation was conducted for 60 days, and a sufficient number of U.S. workers were no able, qualified and available for the position(s):

(i) A job order for the position(s) was on file for 60 consecutive days ending ______ with the ______________________, and
Date State Employment Service Name

(ii) A vacancy announcement(s) for the position(s) was posted at the place of employment for 60 consecutive days

b. Recruitment for the position(s) identified in this attestation will be conducted for each F-1 student hired more than 90 days after the end of the recruitment period referenced in Item 6 a. F-1 students will be hired only when recruitment did not result in a sufficient number of U.S workers who were able, qualified and available.

(i) A job order will be on file with the local office of the State employment service indicated above until September 30, 1994, o

(ii) A job order will be on file with the local office of the State employment service indicated above for 60 consecutive days ending no more than 90 days before the date of hire and a vacancy announcement(s) will be posted at the place of employment for 6 consecutive days ending no more than 90 days before the date of hire.

7. Wage Attestation.

F-1 Students and other similarly situated workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is greater.

PART C: EMPLOYER DECLARATION

This attestation will be submitted to the educational institution either simultaneous to or after filing with the Department of Labor (DOL). In no case will this attestation be filed with an educational institution prior to or without filing with DOL.

Pursuant to 28 USC 1746, I declare under penalty of perjury the information provided on this form is true and correct. In addition, I declare that I will comply with DOL regulations governing this program and in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of DOL, upon such official request, during any investigation under this attestation or the Immigration and Nationality Act.

Name and Title of the Hiring Official

Signature of the Hiring Official

Date

FOR US GOVERNMENT USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on ______ and will be valid to September 30, 1994 unless the employer withdraws it or is disqualified from employing F-1 students by DOL.
Date

Signature of Authorized DOL Official

ETA Case No.

Date

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0315) Washington, D.C. 20503.

INSTRUCTIONS FOR COMPLETING FORM ETA 9034
ATTESTATION BY EMPLOYERS FOR OFF-CAMPUS WORK AUTHORIZATION FOR F-1 STUDENTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THE FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulation" are citations to identical provisions at 20 CFR 655, Subparts J and K, and 29 CFR Part 506, Subparts J and K.

Employers seeking to hire F-1 students for off-campus employment must submit the completed and dated original Form ETA-9034 (or a facsimile) and one copy of the completed original Form ETA-9034 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located, any time after the last date of recruitment, but no more than 60 days after the last day of recruitment. See § ____.930 for DOL Regional Office addresses.

Employers must also submit an attestation to the educational institution(s) at which the F-1 student(s) to be employed is enrolled in a full course of study. The attestation may be submitted simultaneously to DOL, and the educational institution, or it may be submitted first to DOL and subsequently to the educational institution, before an accepted copy is returned from DOL to the employer. In no case shall the attestation be submitted to the educational institution prior to or without submitting to DOL. See § ____.940 for detailed explanation.

To knowingly furnish any false information in the preparation of this form, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

PART A: OFFER OF EMPLOYMENT

Item 1. Employer. Enter the full legal name of the business, firm, or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address. Self explanatory.

Item 3. Telephone Number. Self explanatory.

Item 4. Federal Employee I.D. Number. Enter the employer's Federal employer identification number assigned by the Internal Revenue Service.

Item 5(a). Titles of Jobs to be Filled by F-1 Students. Enter the common name(s) or payroll title(s) of the job(s) being offered.

Item 5(b). Two digit occupational division. Enter the two digit code which most closely describes the job(s) to be performed.

Item 5(c). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc.

Item 5(d). Location(s) Where Alien(s) Will Work. Enter the full address of the site or location where the work will actually be performed, if different from the address in item 2.

PART B: EMPLOYER ATTESTATIONS

Item 6. Recruitment attestation. Employers must attest that they have recruited for the position for 60 days, and that a sufficient number of U.S. workers were not able, qualified and available. To satisfy this requirement employers must: 1. place a job order for 60 consecutive days with the local office of the State employment service in the area of intended employment, and 2. post a vacancy announcement at the place of business.

Employers must also attest that for an F-1 student(s) hired more than 90 days after the end of the 60 day recruitment referenced above, subsequent recruitment will be conducted prior to hiring each student(s). To satisfy this attestation employers must either; 1. place an open job order for the position(s) with the local office of the Statement employment service in the intended area of employment until September 30, 1994; or, 2. place a job order with the local office of the State employment service in the area of intended employment for 60 consecutive days, and post an announcement of the job vacancy for 60 consecutive days, at the employer's place of business. The 60-day job order and the 60-day posting of the job vacancy shall not end more than 90 days before the date of hire.

Item 7. Wage attestation. Employers must attest that they will pay the F-1 student(s) and any other similarly situated worker(s) the actual wage for the occupation at the place of employment or the prevailing wage for the occupation in the intended area of employment, whichever is higher. The employer shall update the prevailing wage for the occupation named in the attestation on an annual basis and shall continue paying the actual wage or the prevailing wage for the entire validity period of the attestation.

The prevailing wage rate for positions named in the attestation, unless subject to the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, is the average rate of wages paid to workers similarly employed in the area of intended employment as determined by a prevailing wage survey published by an independent authoritative source or a prevailing wage finding from the State Employment Service in the intended area of employment.

Employers should be prepared to produce documentary evidence in support of the employer attestations for at least 18 months from the closing date of the recruitment period to which the documentation is applicable, and make it available to officials of DOL upon such officials' request. See Appendix A to subpart J for guidance on the documentation to support these attestations.

PART C: EMPLOYER DECLARATION

By signing this form, the hiring official is attesting to: the accuracy of the information on the form, and having complied with the conditions of PART B: EMPLOYER ATTESTATIONS. False statements are subject to Federal criminal penalties, as stated above. If the Secretary of Labor determines that an employer has provided an attestation that is materially false or has failed to pay wages in accordance with the attestation, after notice and an opportunity for a hearing, the employer shall be disqualified from employing an F-1 student.

The Department of Labor will accept this attestation upon receipt from the employer. The employer may submit it to the educational institution, without indication of Department of Labor acceptance, for off-campus work authorization for F-1 students. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance will be returned to the employer. Within 15 days thereafter, the employer must provide the educational institution with a copy of the attestation accepted by the Department of Labor as indicated thereon. Failure to provide a copy of the accepted attestation to the educational institution shall result in notification to the U.S. Attorney General that the employer does not have a valid attestation on file with the Department of Labor.

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TWO-DIGIT OCCUPATIONAL DIVISIONS

PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

00/01	OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING
02	OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES
03	COMPUTER-RELATED OCCUPATIONS
04	OCCUPATIONS IN LIFE SCIENCES
05	OCCUPATIONS IN SOCIAL SCIENCES
07	OCCUPATIONS IN MEDICINE AND HEALTH
09	OCCUPATIONS IN EDUCATION
10	OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES
11	OCCUPATIONS IN LAW AND JURISPRUDENCE
12	OCCUPATIONS IN RELIGION AND THEOLOGY
13	OCCUPATIONS IN WRITING
14	OCCUPATIONS IN ART
15	OCCUPATIONS IN ENTERTAINMENT AND RECREATION
16	OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS
18	MANAGERS AND OFFICIALS
19	MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

CLERICAL AND SALES OCCUPATIONS

20	STENOGRAPHY, TYPING, FILING AND RELATED OCCUPATIONS
21	COMPUTING AND ACCOUNT-RECORDING OCCUPATIONS
22	PRODUCTION AND STOCK CLERKS AND RELATED OCCUPATIONS
23	INFORMATION AND MESSAGE DISTRIBUTION OCCUPATIONS
24	MISCELLANEOUS CLERICAL OCCUPATIONS
25	SALES OCCUPATIONS, SERVICES
26	SALES OCCUPATIONS, CONSUMABLE COMMODITIES
27	SALES OCCUPATIONS, OTHER COMMODITIES
29	MISCELLANEOUS SALES OCCUPATIONS

SERVICE OCCUPATIONS

30	DOMESTIC SERVICE OCCUPATIONS
31	FOOD AND BEVERAGE PREPARATION AND SERVICE OCCUPATIONS
32	LODGING AND RELATED SERVICE OCCUPATIONS
33	BARBERING, COSMETOLOGY, AND RELATED SERVICE OCCUPATIONS
34	AMUSEMENT AND RECREATION SERVICE OCCUPATIONS
35	MISCELLANEOUS PERSONAL SERVICE OCCUPATIONS
36	APPAREL AND FURNISHINGS SERVICE OCCUPATIONS
37	PROTECTIVE SERVICE OCCUPATIONS
38	BUILDING AND RELATED SERVICE OCCUPATIONS

AGRICULTURAL, FISHERY, FORESTRY, AND RELATED OCCUPATIONS

40	PLANT FARMING OCCUPATIONS
41	ANIMAL FARMING OCCUPATIONS
42	MISCELLANEOUS AGRICULTURAL AND RELATED OCCUPATIONS
44	FISHERY AND RELATED OCCUPATIONS
45	FORESTRY OCCUPATIONS
46	HUNTING, TRAPPING AND RELATED OCCUPATIONS

PROCESSING OCCUPATIONS

50	OCCUPATIONS IN PROCESSING OF METAL
51	ORE REFINING AND FOUNDRY OCCUPATIONS
52	OCCUPATIONS IN PROCESSING OF FOOD, TOBACCO, AND RELATED PRODUCTS

53	OCCUPATIONS IN PROCESSING OF PAPER AND RELATED MATERIALS
54	OCCUPATIONS IN PROCESSING OF PETROLEUM, COAL, NATURAL AND MANUFACTURED GAS AND RELATED PRODUCTS
55	OCCUPATIONS IN PROCESSING OF RUBBER, PAINT AND RELATED PRODUCTS
56	OCCUPATIONS IN PROCESSING OF WOOD AND WOOD PRODUCTS
57	OCCUPATIONS IN PROCESSING OF STONE, CLAY, GLASS AND RELATED PRODUCTS
58	OCCUPATIONS IN PROCESSING OF LEATHER, TEXTILES AND RELATED PRODUCTS
59	OTHER PROCESSING OCCUPATIONS

MACHINE TRADES OCCUPATIONS

60	METAL MACHINING OCCUPATIONS
61	OTHER METALWORKING OCCUPATIONS
62/63	MECHANICS AND MACHINERY REPAIRERS
64	PAPERWORKING OCCUPATIONS
65	PRINTING OCCUPATIONS
66	WOOD MACHINING OCCUPATIONS
67	OCCUPATIONS IN MACHINING STONE, CLAY, GLASS, AND RELATED MATERIALS
68	TEXTILE OCCUPATIONS
69	OTHER MACHINE TRADES OCCUPATIONS

BENCHWORK OCCUPATIONS

70	OCCUPATIONS IN FABRICATION, ASSEMBLY, AND REPAIR OF METAL PRODUCTS
71	OCCUPATIONS IN FABRICATION AND REPAIR OF SCIENTIFIC, MEDICAL, PHOTOGRAPHIC, OPTIC HOROLOGICAL, AND RELATED PRODUCTS
72	OCCUPATIONS IN ASSEMBLY AND REPAIR OF ELECTRICAL EQUIPMENT
73	OCCUPATIONS IN FABRICATION AND REPAIR OF PRODUCTS MADE FROM ASSORTED MATERIALS
74	PAINTING, DECORATING, AND RELATED OCCUPATIONS
75	OCCUPATIONS IN FABRICATION AND REPAIR OF PLASTICS, SYNTHETICS, RUBBER, AND RELATE PRODUCTS
76	OCCUPATIONS IN FABRICATION AND REPAIR OF WOOD PRODUCTS
77	OCCUPATIONS IN FABRICATION AND REPAIR OF SAND, STONE, CLAY, AND GLASS PRODUCTS
78	OCCUPATIONS IN FABRICATION AND REPAIR OF TEXTILE, LEATHER, AND RELATED PRODUCTS
79	OTHER BENCHWORK OCCUPATIONS

STRUCTURAL WORK OCCUPATIONS

80	OTHER OCCUPATIONS IN METAL FABRICATING
81	WELDERS, CUTTERS AND RELATED OCCUPATIONS
82	ELECTRICAL ASSEMBLING, INSTALLING, AND REPAIRING OCCUPATIONS
84	PAINTING, PLASTERING, WATERPROOFING, CEMENTING, AND RELATED OCCUPATIONS
85	EXCAVATING, GRADING, PAVING, AND RELATED OCCUPATIONS
86	OTHER CONSTRUCTION OCCUPATIONS
89	OTHER STRUCTURAL WORK OCCUPATIONS

MISCELLANEOUS OCCUPATIONS

90	MOTOR FREIGHT OCCUPATIONS
91	OTHER TRANSPORTATION OCCUPATIONS
92	PACKAGING AND MATERIALS HANDLING OCCUPATIONS
93	OCCUPATIONS IN EXTRACTION OF MINERALS
95	OCCUPATIONS IN PRODUCTION AND DISTRIBUTION OF UTILITIES
96	OTHER AMUSEMENT, RECREATION, MOTION PICTURE, RADIO AND TELEVISION OCCUPATIONS
97	OCCUPATIONS IN GRAPHIC ART WORK

[FR Doc. 91-26382 Filed 11-05-91; 8:45 am]

BILLING CODES 4510-10-C, 4510-27-C

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer	5. Employer's Address (No., Street, City, State, and ZIP Code) — OMB Approval No.: 1205-0310 Expiration Date: 08/31/93
2. Federal Employer I.D. Number	
3. Telephone No. (	6. Address Where Documentation is Kept (if different than item 5)
4. Fax No. (	

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-Digit Occupational Groups Code	(b) Job Title (Check box if position is part-time)	(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
	☐					
	☐					
	☐					
	☐					

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed: (check appropriate box)

- ☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or
- ☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in a conspicuous place where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to the officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official ____ Signature ____ Date ____

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from ______________ through ______________

Signature and Title of Authorized DOL Official ____ ETA Case No. ____

Subsequent DOL Action: Suspended ______________ (date) Invalidated ______________ (date) Withdrawn ______________ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for revewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the Office of Management and Budget:, Paperwork Reduction Project (1205-0310), Washington, DC 20503

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES ETA 9035 (Jan. 1992)

"Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wages and Hours Division of the United States Department of labor."

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INSTRUCTIONS FOR COMPLETING FORM ETA 9035
LABOR CONDITION APPLICATION FOR
H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, Subparts H and I, and to 29 CFR 507, Subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA Regional Office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the INS.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Telephone. Self-explanatory.

Item 4. FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. (If different than item 5). Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three Digit Occupational Groups Code. Enter the three-digit code which most closely describes the job(s) to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name(s) or payroll title(s) of the job(s) being offered. Check box to the right of the blank if position is part-time.

Item 7(c). Number of Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(f). Location(s) Where H-1B Nonimmigrants Will Work. Enter the city and state of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's place of business or worksite and made available to DOL upon such official's request. See **20 CFR 655.730** for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the occupational classification.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupations at the worksite.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupations. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in a conspicuous place where H-1B nonimmigrants will be employed.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative or employees, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510-30-C; 4510-27-C

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Appendix 2 (Not to be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models. Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

BILLING CODE 4510-30-M; 4510-27-M

THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001	ARCHITECTURAL OCCUPATIONS
002	AERONAUTICAL ENGINEERING OCCUPATIONS
003	ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005	CIVIL ENGINEERING OCCUPATIONS
006	CERAMIC ENGINEERING OCCUPATIONS
007	MECHANICAL ENGINEERING OCCUPATIONS
008	CHEMICAL ENGINEERING OCCUPATIONS
010	MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011	METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012	INDUSTRIAL ENGINEERING OCCUPATIONS
013	AGRICULTURAL ENGINEERING OCCUPATIONS
014	MARINE ENGINEERING OCCUPATIONS
015	NUCLEAR ENGINEERING OCCUPATIONS
019	OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020	OCCUPATIONS IN MATHEMATICS
021	OCCUPATIONS IN ASTRONOMY
022	OCCUPATIONS IN CHEMISTRY
023	OCCUPATIONS IN PHYSICS
024	OCCUPATIONS IN GEOLOGY
025	OCCUPATIONS IN METEOROLOGY
029	OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030	OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031	OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032	OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033	OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039	OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040	OCCUPATIONS IN AGRICULTURAL SCIENCES
041	OCCUPATIONS IN BIOLOGICAL SCIENCES
045	OCCUPATIONS IN PSYCHOLOGY
049	OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050	OCCUPATIONS IN ECONOMICS
051	OCCUPATIONS IN POLITICAL SCIENCE
052	OCCUPATIONS IN SOCIOLOGY
055	OCCUPATIONS IN ANTHROPOLOGY
059	OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070	PHYSICIANS AND SURGEONS
071	OSTEOPATHS
072	DENTISTS
073	VETERINARIANS
074	PHARMACISTS
076	THERAPISTS
077	DIETITIANS
078	OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079	OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090	OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091	OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092	OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094	OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096	HOME ECONOMISTS AND FARM ADVISERS
097	OCCUPATIONS IN VOCATIONAL EDUCATION
099	OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100	LIBRARIANS
101	ARCHIVISTS
102	MUSEUM CURATORS AND RELATED OCCUPATIONS
109	OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110	LAWYERS
111	JUDGES
119	OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120	CLERGY
129	OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131	WRITERS
132	EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139	OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

142	ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149	OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152	OCCUPATIONS IN MUSIC
159	OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

160	ACCOUNTANTS, AUDITORS, AND RELATED OCCUPATIONS
161	BUDGET AND MANAGEMENT SYSTEMS ANALYSIS OCCUPATIONS
164	ADVERTISING MANAGEMENT OCCUPATIONS
165	PUBLIC RELATIONS MANAGEMENT OCCUPATIONS
166	PERSONNEL MANAGEMENT OCCUPATIONS
169	OTHER OCCUPATIONS IN ADMINISTRATIVE SPECIALIZATIONS

MANAGERS AND OFFICIALS

180	AGRICULTURE, FORESTRY, AND FISHING INDUSTRY MANAGERS AND OFFICIALS
181	MINING INDUSTRY MANAGERS AND OFFICIALS
182	CONSTRUCTION INDUSTRY MANAGERS AND OFFICIALS
183	MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184	TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185	WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186	FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187	SERVICE INDUSTRY MANAGERS AND OFFICIALS
188	PUBLIC ADMINISTRATION MANAGERS AND OFFICIALS
189	MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

195	OCCUPATIONS IN SOCIAL AND WELFARE WORK
199	MISCELLANEOUS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

SALES PROMOTION OCCUPATIONS

297	FASHION MODELS

[FR Doc. 92-693 Filed 1-10-92; 8:45 am]

BILLING CODE 4510-30-C; 4510-27-C

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Form **8843**

Department of the Treasury
Internal Revenue Service

Statement for Exempt Individuals and Individuals With a Medical Condition

(Under Section 7701(b) of the Internal Revenue Code)

For the year January 1—December 31, 1993, or other tax year beginning ...., 1993, and ending ...., 19......

OMB No. 1545-1411

1993

Attachment Sequence No. 102

Your first name and initial	Last name	Your U.S. taxpayer identification number, if any

Fill in your addresses only if you are filing this form by itself and not with your tax return	Address in country of residence	Address in the United States

Part I General Information

1a Enter the type of U.S. visa (e.g., F, J, M, etc.) and visa number, if any, you held during 1993 and the date it was acquired ▶ ....

b If the type of visa you held during 1993 changed, enter the new visa type and the date it was acquired ▶ ....

2 Of what country were you a citizen during the tax year? ....

3a What country issued you a passport? ....

b Enter your passport number ▶ ....

4a Enter the actual number of days you were present in the United States during: ▶ 1993 ______ 1992 ______ 1991 ______ .

b Enter the number of days in 1993 you claim you can exclude for purposes of the substantial presence test ▶

Part II Teachers and Trainees

5 Enter the name, address, and telephone number of the academic institution you attended during 1993 ▶ ....

6 Enter the name, address, and telephone number of the director of the academic or other specialized program you participated in during 1993 ▶ ....

7 Enter the type of U.S. visa (e.g., F, J, M, etc.), if any, you held during: ▶ 1987 ______ 1988 ______ 1989 ______ 1990 ______ 1991 ______ 1992 ______ . If the type of visa you held during any of these years changed, attach a statement showing the new visa type and the date it was acquired.

8 Were you present in the United States as a teacher, trainee, or student for any part of 2 of the 6 prior calendar years (1987 through 1992)? . . . . ☐ Yes ☐ No

If you answered "Yes" to line 8, you cannot exclude days of presence as a teacher or trainee unless you meet the exception explained on page 3.

Part III Students

9 Enter the name, address, and telephone number of the academic institution you attended during 1993 ▶ ....

10 Enter the name, address, and telephone number of the director of the academic or other specialized program you participated in during 1993 ▶ ....

11 Enter the type of U.S. visa (e.g., F, J, M, etc.), if any, you held during: ▶ 1987 ______ 1988 ______ 1989 ______ 1990 ______ 1991 ______ 1992 ______ . If the type of visa you held during any of these years changed, attach a statement showing the new visa type and the date it was acquired.

12 Were you present in the United States as a teacher, trainee, or student for any part of more than 5 calendar years? . . . . ☐ Yes ☐ No

If you answered "Yes" to line 12, you must provide sufficient facts on an attached statement to establish that you do not intend to reside permanently in the United States.

13 During 1993, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to change your status to that of a lawful permanent resident of the United States? . . . . ☐ Yes ☐ No

14 If you answered "Yes" to line 13, explain ▶ ....

For Paperwork Reduction Act Notice, see page 3. Cat. No. 17227H Form **8843** (1993)

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Part IV Professional Athletes

15 Enter the name of the charitable sports event(s) in the United States in which you competed during 1993 and the dates of competition ▶

16 Enter the name(s) and employer identification number(s) of the charitable organization(s) that benefited from the sports event(s) ▶

Note: *You must attach a statement to verify that all of the net proceeds of the sports event(s) were contributed to the charitable organization(s) listed on line 16.*

Part V Individuals With a Medical Condition or Medical Problem

17a Describe the medical condition or medical problem that prevented you from leaving the United States ▶

b Enter the date you intended to leave the United States prior to the onset of the medical condition or medical problem described on line 17a ▶

c Enter the date you actually left the United States ▶

18 **Physician's Statement:**

I certify that ______________________________

Name of taxpayer

was unable to leave the United States on the date shown on line 17b because of the medical condition or medical problem described on line 17a and there was no indication that his or her condition or problem was preexisting.

____

Name of physician or other medical official

____

Physician or other medical official's address and telephone number

______________________________ ____________

Physician or other medical official's signature Date

Sign here only if you are filing this form by itself and not with your tax return	Under penalties of perjury, I declare that I have examined this form and the accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. ▶ ______________________ Your signature ▶ ____________ Date

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

	Form 8843 Parts I & II	Form 8843 Parts I & III	Form 8843 Parts I & IV	Form 8843 Parts I & V
Recordkeeping	13 min.	13 min.	13 min.	13 min.
Learning about the law or the form	5 min.	5 min.	4 min.	5 min.
Preparing the form	29 min.	34 min.	24 min.	34 min.
Copying, assembling, and sending the form to the IRS	17 min.	17 min.	17 min.	17 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service,** Attention: Reports Clearance Officer, PC:FP, Washington, DC 20224; and the **Office of Management and Budget,** Paperwork Reduction Project (1545-1411), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, see **How To File** on page 4.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Who Must File

You, as an alien individual, must file Form 8843 or a similar statement to explain the basis of your claim that you can exclude days of presence in the United States for purposes of the substantial presence test because you:

- Were an exempt individual (other than a foreign government-related individual), or
- Were unable to leave the United States because of a medical condition or medical problem.

Substantial Presence Test

You are considered a U.S. resident if you meet the substantial presence test for 1993. You meet this test if you were physically present in the United States for at least:

- 31 days during 1993, and
- 183 days during the period 1993, 1992, and 1991, counting all the days of physical presence in 1993 but only 1/3 the number of days of presence in 1992 and only 1/6 the number of days in 1991.

Note: *To claim the closer connection to a foreign country or countries exception to the substantial presence test described in Regulations section 301.7701(b)-2, you must file Form 8840, Closer Connection Exception Statement, or a similar statement.*

Days of Presence in the United States.—Generally, you are treated as being present in the United States on any day that you are physically present in the country at any time during the day. However, you do not count the following days of presence in the United States for purposes of the substantial presence test:

1. Days you regularly commuted to work in the United States from a residence in Canada or Mexico.
2. Days you were in the United States for less than 24 hours when you were in transit between two places outside the United States.
3. Days you were unable to leave the United States because of a medical condition or medical problem that developed while you were in the United States.
4. Days you were an exempt individual.

Exempt Individuals

For purposes of the substantial presence test, an exempt individual includes anyone in the following categories.

- A teacher or trainee, temporarily present in the United States under a "J" visa (other than as a student), who substantially complies with the requirements of the visa.
- A student, temporarily present in the United States under an "F," "J," or "M" visa, who substantially complies with the requirements of the visa.
- A professional athlete temporarily in the United States to compete in a charitable sports event.
- An individual temporarily present in the United States as a foreign government-related individual.

Teachers and Trainees (Part II)

If you were a teacher or trainee under a "J" visa, you are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your "J" visa status.

Even if you meet these requirements, you cannot exclude days of presence in 1993 as a teacher or trainee if you were exempt as a teacher, trainee, or student for any part of 2 of the 6 prior calendar years. But see the **Exception** below. If you qualify to exclude days of presence as a teacher or trainee, complete Parts I and II of Form 8843.

Exception. If you were exempt as a teacher, trainee, or student for any part of 2 of the 6 prior calendar years, you can exclude days of presence in 1993 as a teacher or trainee only if **all four** of the following apply:

1. You were exempt as a teacher, trainee, or student for any part of 3 (or fewer) of the 6 prior calendar years.
2. A foreign employer paid all your compensation during 1993.
3. You were present in the United States as a teacher or trainee in any of the 6 prior years.
4. A foreign employer paid all of your compensation during each of those prior 6 years you were present in the United States as a teacher or trainee.

For more details, see **Pub. 519,** U.S. Tax Guide for Aliens.

If you meet this exception, you must attach information to verify that a foreign employer paid all the compensation you received in 1993 and all prior years that you were present in the United States as a teacher or trainee.

Students (Part III)

If you were a student under an "F," "J," or "M" visa, you are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status.

Even if you meet these requirements, you cannot exclude days of presence in 1993 as a student if you were exempt as a teacher, trainee, or student for any part of more than 5 calendar years unless you establish to the satisfaction of the IRS district director that you do not intend to reside permanently in the United States. The facts and circumstances to be considered in determining if you have demonstrated an intent to reside permanently in the United States include, but are not limited to:

1. Whether you have maintained a closer connection to a foreign country than to the United States (for details, see Pub. 519), and
2. Whether you have taken affirmative steps to change your status from nonimmigrant to lawful permanent resident.

If you qualify to exclude days of presence as a student, complete Parts I and III of Form 8843.

Professional Athletes (Part IV)

A professional athlete is an individual who is temporarily in the United States to compete in a charitable sports event. For details on charitable sports events, see Pub. 519.

If you qualify to exclude days of presence as a professional athlete, complete Parts I and IV of Form 8843.

Individuals With a Medical Condition or Medical Problem (Part V)

For purposes of the substantial presence test, do not count the days you intended to leave the United States but could not do so because of a medical condition or medical problem that developed while you were in the United States. Whether you intended to leave the United States on a particular day is determined based on all the facts and circumstances. For more details, see Pub. 519.

If you qualify to exclude days of presence because of a medical condition or medical problem, complete Part I and lines 17a through 17c of Part V. Have your physician or other medical official complete line 18 of Part V.

How To File

Attach Form 8843 to your 1993 income tax return. If you do not have to file a return, send the form to the Internal Revenue Service Center, Philadelphia, PA 19255 by the due date (including extensions) for filing Form 1040NR. See the Instructions for Form 1040NR.

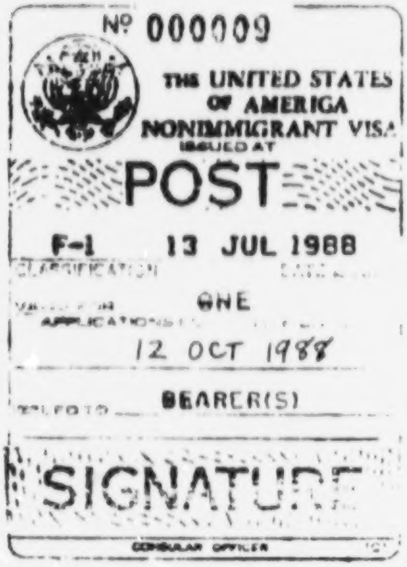
Penalty for Not Filing Form 8843 or a Similar Statement

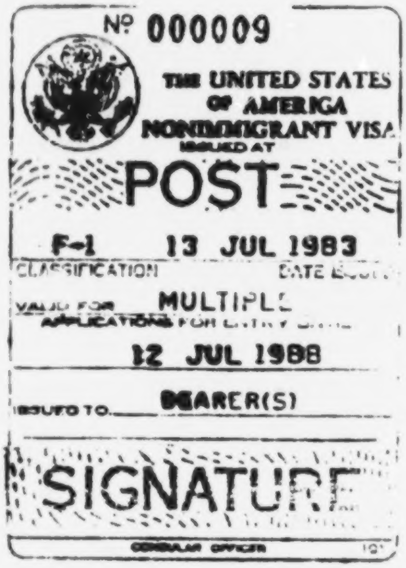
If you do not timely file Form 8843 or a similar statement, you may not exclude the days you were present in the United States as a professional athlete or because of a medical condition or medical problem that arose while you were in the United States. Failure to exclude days of presence in the United States could result in your being considered a U.S. resident under the substantial presence test.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Appendix 4

Visa Stamp and Visa Label


Nº 000009
THE UNITED STATES OF AMERICA
NONIMMIGRANT VISA
ISSUED AT
POST
F-1 13 JUL 1988
CLASSIFICATION DATE ISSUED
VALID FOR ONE
APPLICATIONS FOR ENTRY UNTIL
12 OCT 1988
ISSUED TO BEARER(S)
SIGNATURE
CONSULAR OFFICER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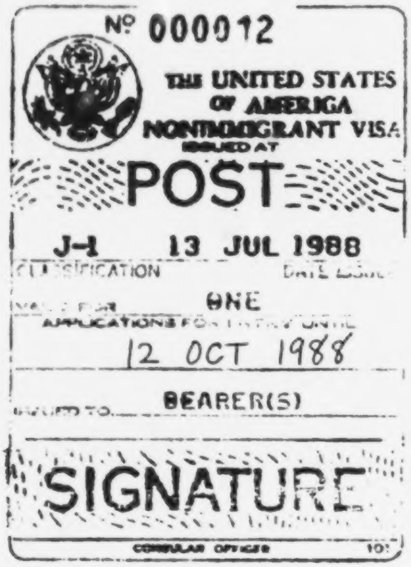
THE UNITED STATES OF AMERICA
NONIMMIGRANT VISA
ISSUED AT
POST
F-1 13 JUL 1983
CLASSIFICATION DATE ISSUED
VALID FOR MULTIPLE
APPLICATIONS FOR ENTRY UNTIL
12 JUL 1988
ISSUED TO BEARER(S)
SIGNATURE
CONSULAR OFFICER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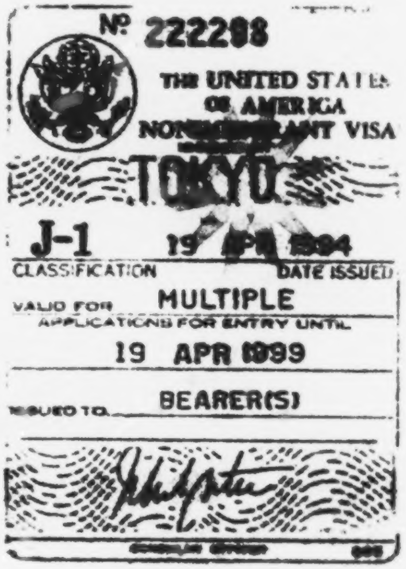
THE UNITED STATES OF AMERICA
NONIMMIGRANT VISA
ISSUED AT
POST
J-1 13 JUL 1988
CLASSIFICATION DATE ISSUED
VALID FOR ONE
APPLICATIONS FOR ENTRY UNTIL
12 OCT 1988
ISSUED TO BEARER(S)
SIGNATURE
CONSULAR OFFICER


Nº 222298
THE UNITED STATES OF AMERICA
NONIMMIGRANT VISA
TOKYO
J-1 19 APR 1994
CLASSIFICATION DATE ISSUED
VALID FOR MULTIPLE
APPLICATIONS FOR ENTRY UNTIL
19 APR 1999
ISSUED TO BEARER(S)
CONSULAR OFFICER

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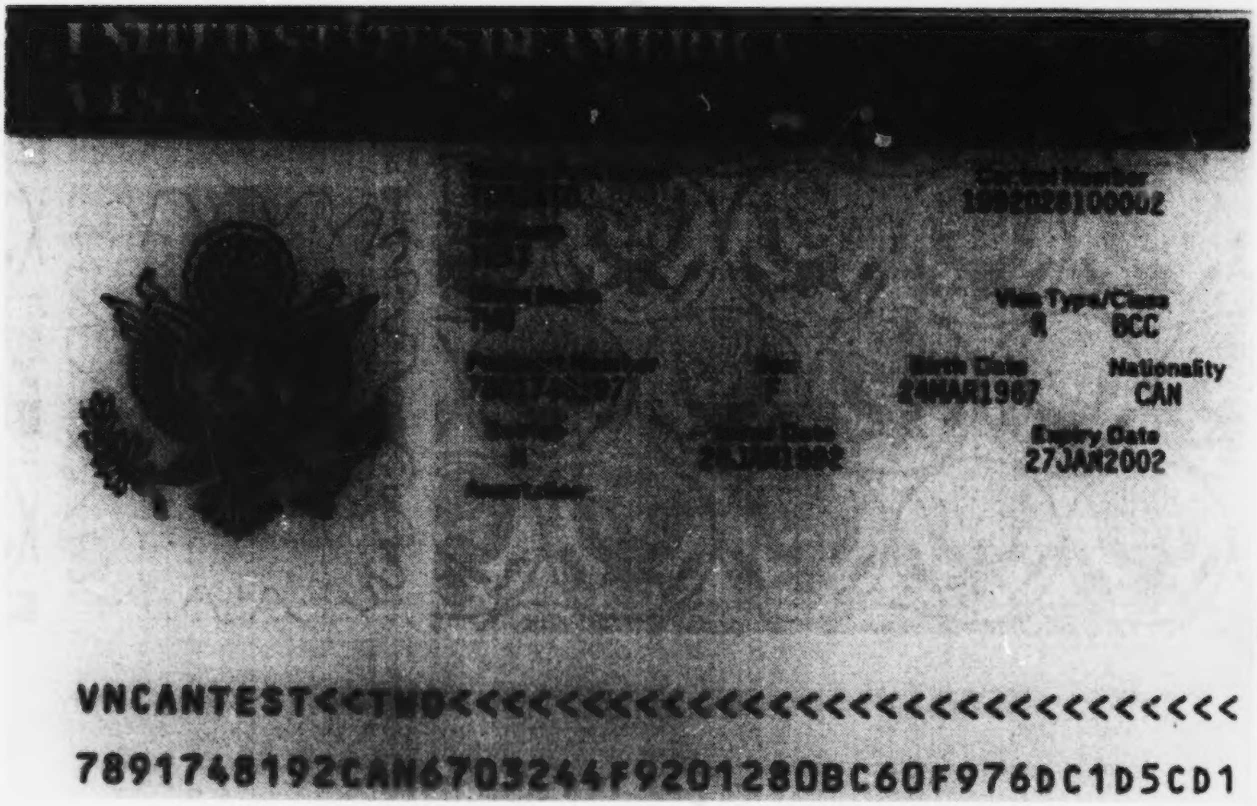

Control Number
1992028100002

Visa Type/Class
R BCC

Birth Date
24MAR1967

Nationality
CAN

Expiry Date
27JAN2002

VNCANTEST<<TMD<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<

7891748192CAN6703244F9201280BC60F976DC1D5CD1

350

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APPENDIX 5

INS Offices

Service Centers

Northern Service Center*
P.O. Box 82521
Lincoln, NE 68501-2521
(402) 437-5218

Eastern Service Center
75 Lower Welden St.
St. Albans, VT 05479-0001
(802) 527-3160

Southern Service Center
(for gen'l correspondence:)
PO Box 36667
Dallas, TX 75235-6667
(for applications, petitions, and submissions of additional evidence:)
PO Box 152122
Irving, TX 75015-2122
(214) 767-7769 through 7773
fax (214) 767-7405

Western Service Center
24000 Avila Road
2nd Floor
Laguna Niguel, CA 92677
(714) 643-4880

Student Data Processing Center

INS Processing Center
ACS Student School Section
P.O. Box 170
London, KY 40741

District Offices

Anchorage District
620 East 10th Avenue
Suite 102
Anchorage, AK 99501
(907) 271-3521

Fairbanks Suboffice
P.O. Box 60208
Fairbanks, AK 99706
Fax: (907) 474-0307
(accepts papers for filing only)

Atlanta District
77 Forsyth St., SW
Room G-85
Atlanta, GA 30303
(404) 331-2788

Charlotte Suboffice
6 Woodlawn Green
Suite 138
Charlotte, NC 28210
(704) 523-1704

South Carolina Suboffice
Federal Building
334 Meeting Street
Room 110
Charleston, SC 29403
(803) 727-4350

Baltimore District
Equitable Bank Center
Tower One
100 South Charles Street
Baltimore, MD 21201
(410) 962-2065

Boston District
JFK Federal Building
Government Center, Room 700
Boston, MA 02203
(617) 565-4943

Hartford Suboffice
450 Main Street
Room 410
Hartford, CT 06103
(203) 240-3171

Buffalo District
68 Court St.
Buffalo, NY 14202
(716) 846-4741

Albany Suboffice
445 Broadway
Room 227
Albany, NY 12207
(518) 472-4621

Chicago District
10 West Jackson Blvd
Chicago, IL 60604
(312) 353-7300

Indiana Suboffice
46 E. Ohio Street
Room 124
Indianapolis, IN 46204
(317) 226-6009

Wisconsin Suboffice
Federal Building
Room 186
517 E. Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-3565

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* Post office box numbers and zip codes for filing specific forms with the Northern Service Center are listed on page A5-3.

Cleveland District
1240 E. 9th St.
Room 1917
Cleveland, OH 44199
(216) 522-4766

Cincinnati Suboffice
US Post Office and Courthouse
5th and Walnut St.
P.O. Box 537
Cincinnati, OH 45201
(513) 287-6080

Dallas District
8101 North Stemmons Freeway
Dallas, TX 75247
(214) 655-3011

Oklahoma City Suboffice
West Park Business Center
4149 Highline Blvd.
Suite 300
Oklahoma City, OK 73108
(405) 942-8670

Denver District
4730 Paris St.
Denver, CO 80209
(303) 371-0135

Salt Lake City Suboffice
125 South State St.
Room 4103
Salt Lake City, UT 84138

Detroit District
333 Mt. Elliott St.
Federal Building
Detroit, MI 48207
(313) 226-3250

El Paso District
700 E. San Antonio
P.O. Box 9398-79984
El Paso, TX 79901
(915) 534-6334

Albuquerque Suboffice
500 Gold Ave., SW
Room 3303
Albuquerque, NM 87103

Harlingen District
2102 Teege Rd.
Harlingen, TX 78550
(512) 427-8592

Helena District
301 S. Park
Room 512, Drawer 10036
Helena, MT 59626
(406) 449-5220

Idaho Suboffice
4620 Overland Road
Room 108
Boise, ID 83705
(208) 334-1821

Honolulu District
595 Ala Moana Boulevard
Honolulu, HI 96813
(808) 541-1388

Guam Suboffice
801 Pacific News Building
238 O'Hara Street
Agana, Guam 96910
(671) 472-7349

Houston District
509 North Belt
Houston, TX 77060
(713) 847-7950

Kansas City District
9747 North Conant Ave.
Kansas City, MO 64153
(816) 891-9312

St. Louis Suboffice
1222 Spruce Street
1st Floor
St. Louis, MO 63103-2815
(314) 539-2532

Los Angeles District
300 North Los Angeles St.
Los Angeles, CA 90012
(213) 894-2780

Miami District
7880 Biscayne Blvd.
Miami, FL 33138
(305) 530-7657

Jacksonville Suboffice
400 West Bay Street
Room G-18
Jacksonville, FL 32202
(904) 791-2625

Tampa Suboffice
5509 W. Gray Street
Room 207
Tampa, FL 33609-1059
(813) 288-1217

New Orleans District
701 Loyola Ave.
Room T-8005
New Orleans, LA 70113
(504) 589-6521

Louisville Suboffice
US Courthouse
Room 601
Louisville, KY 40202
(502) 582-6395

Memphis Suboffice
245 Wagner Place
Suite 250
Memphis, TN 38103
(901) 544-3301

Newark District
970 Broad St.
Federal Building
Newark, NJ 07102
(201) 645-2269

New York District
26 Federal Plaza
New York, NY 10278
(212) 264-5942

Omaha District
3736 South 132nd St.
Omaha, NE 68144
(402) 697-9152

Philadelphia District
1600 Callowhill St.
Philadelphia, PA 19130
(215) 597-7305

Pittsburgh Suboffice
Room 2130 Federal Building
1000 Liberty Ave.
Pittsburgh, PA 15222
(412) 644-3356

Phoenix District
2035 North Central
Phoenix, AZ 85004
(602) 379-3114

Tucson Suboffice
300 W. Congress
Room 1T
Tucson, AZ 85701-1386
(602) 670-4624

Las Vegas Suboffice
Foley Federal Building
300 Las Vegas Blvd., South
Room 104
Las Vegas, NV 89101
(702) 384-3696

Reno Suboffice
1351 Corporate Blvd.
Reno, NV 89502
(702) 784-5427

Portland (Maine) District
739 Warren Ave.
Portland, ME 04103
(207) 780-3399

Vermont Suboffice
Federal Bldg.
50 S. Main Street
St. Albans, VT 05478
(802) 951-6658

Portland (Oregon) District
511 N.W. Broadway
Federal Building
Portland, OR 97209
(503) 326-2155

St. Paul District
2901 Metro Drive
Bloomington, MN 55425
(612) 335-2211

St. Thomas Suboffice
Federal Building, 1st Floor
Room 117
Veterans Drive
Charlotte Amalie
St. Thomas, VI 00804
(809) 774-1390

San Antonio District
8940 Fourwinds Drive
San Antonio, TX 78239
(512) 229-6356

San Diego District
880 Front St.
San Diego, CA 92188
(619) 557-5645

San Francisco District
630 Sansome St.
Appraisers Building
San Francisco, CA 94111
(415) 705-4571

Fresno Suboffice
865 Fulton Mall
Fresno, CA 93721
(209) 487-5091

Sacramento Suboffice
711 J Street
Sacramento, CA 95814
(916) 551-2785

San Jose Suboffice
U.S. Federal Building
Room 1150
280 S. First Street
San Jose, CA 95113
(408) 291-7876

San Juan District
Carlos Chardon St.
3rd Floor
Hato Rey, PR 00918
(809) 766-5380

St. Croix Suboffice
P.O. Box 1458
Kingshill
St. Croix, VI 00851
(809) 778-6559

Seattle District
815 Airport Way, South
Seattle, WA 98134
(206) 553-0070

Spokane Suboffice
691 United States Courthouse
Spokane, WA 99201
(509) 353-2758

Washington, D.C., District
4420 North Fairfax Dr.
Arlington, VA 22203
(202) 307-1640

Norfolk Suboffice
200 Granby Mall
Federal Building
Room 439
Norfolk, VA 23510
(804) 441-3081

Regional Offices

Eastern Region
70 Kimball Avenue
South Burlington, VT 05403-6813
(802) 660-5000

Central Region
7701 North Stemmons Freeway
Dallas, TX 75247
(214) 767-7011

Western Region
24000 Avila Road
2nd Floor
Laguna Niguel, CA 92677
(714) 643-4236

Box Numbers for Northern Service Center

Post office box numbers and zip codes for forms are:

I-90	PO Box 87090, Lincoln, NE 68501-7090
I-102	PO Box 87102, Lincoln, NE 68501-7102
I-129	PO Box 87129, Lincoln, NE 68501-7129
I-129F	PO Box 87130, Lincoln, NE 68501-7130
I-130	PO Box 87130, Lincoln, NE 68501-7130
I-131	PO Box 87131, Lincoln, NE 68501-7131
I-140	PO Box 87140, Lincoln, NE 68501-7140
I-212	PO Box 87724, Lincoln, NE 68501-7724
I-290	PO Box 87290, Lincoln, NE 68501-7290
I-360	PO Box 87360, Lincoln, NE 68501-7360
I-400	PO Box 87400, Lincoln, NE 68501-7400
I-485	PO Box 87485, Lincoln, NE 68501-7485
I-526	PO Box 87526, Lincoln, NE 68501-7526
I-539	PO Box 87539, Lincoln, NE 68501-7539
I-589	PO Box 87589, Lincoln, NE 68501-7589
I-687	PO Box 87687, Lincoln, NE 68501-7687

I-612 PO Box 87724, Lincoln, NE 68501-7724
I-690 PO Box 87690, Lincoln, NE 68501-7690
I-695 PO Box 87695, Lincoln, NE 68501-7695
I-698 PO Box 87698, Lincoln, NE 68501-7698
I-724 PO Box 87724, Lincoln, NE 68501-7724
I-751 PO Box 87751, Lincoln, NE 68501-7751
I-765 PO Box 87765, Lincoln, NE 68501-7765
I-817 PO Box 87817, Lincoln, NE 68501-7817
I-824 PO Box 87824, Lincoln, NE 68501-7824

If you plan to use an overnight service that does not deliver to a post office box, use the general street address: Northern Service Center, U.S. Immigration and Naturalization Service, 850 S, Lincoln, NE 68508.

APPENDIX 6

Department of Labor Regional Offices

Region I
One Congress St., 10th Floor
Boston, MA 02114-2021
(617) 565-4446

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II
201 Varick St., Room 755
New York, NY 10014
(212) 337-2378

States served: New York, New Jersey, Puerto Rico, U.S. Virgin Islands

Region III
Post Office Box 8796
Philadelphia, PA 19101
(215) 596-6363

States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV
1371 Peachtree St., NE
Atlanta, GA 30309
(404) 347-3938

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V
230 S. Dearborn St., Room 605
Chicago, IL 60604
(312) 353-1550

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI
525 Griffin St., Room 314
Dallas, TX 75202
(214) 767-4989

States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII
911 Walnut St., Suite 700
Kansas City, MO 64106
(816) 426-3796

States served: Iowa, Kansas, Missouri, Nebraska

Region VIII
1961 Stout St.,16th floor
Denver, CO 80294
(303) 844-4613

States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX
71 Stevenson St., Room 805
San Francisco, CA 94119
(415) 744-6647

States served: Arizona, California, Guam, Hawaii, Nevada

Region X
1111 Third Avenue
Suite 900
Seattle, WA 98101
(206) 553-5297

States served: Alaska, Idaho, Oregon, Washington

State Employment Security Agencies (alphabetical by state)	**DOL region**
Department of Industrial Relations 649 Monroe Street Industrial Relations Building Montgomery, AL 36130 (205) 242-8900	IV
Employment Security Division State of Alaska PO Box 25509 Juneau, AK 99802-5509 (907) 465-2712	X

Department of Economic Security IX
P.O. Box 6123-010A
Phoenix, AZ 85005
(602) 542-5678

Employment Security VI
2 Capitol Mall
P.O. Box 2981
Little Rock, AR 72203-2981
(501) 682-2121

Employment Development Department IX
P.O. Box 942880, MIC 83
Sacramento, CA 94280-0001
(916) 654-8210

Department of Labor and Employment VIII
600 Grant Street
Suite 900
Denver, CO 80203-3528
(303) 837-3801

Connecticut Employment Security Division I
Labor Certification Unit
200 Folly Brook Boulevard
Weathersfield, CT 06109-1114
(203) 566-4384

Delaware Department of Labor III
820 North French
Carvel State Building
6th Floor
Wilmington, DE 19801
(302) 577-2713

D.C. Department of Employment Services III
Employment Security Building
Room 600
500 C Street, NW
Washington, DC 20001
(202) 639-1001

Dept of Labor and Employment Security IV
Hartman Building
Suite 303
2012 Capital Circle, SE
Tallahassee, FL 32399-2152
(904) 922-7021

Georgia Department of Labor IV
Sussex Place
148 International Boulevard, NE
Atlanta, GA 30303
(404) 656-3011

Dept. of Labor and Industry Relations IX
830 Punch Bowl St.
Room 320
Honolulu, HI 96831
(808) 586-8844

Department of Employment X
State of Idaho
317 Main Street
Boise, ID 83735
(208) 334-6110

Department of Employment Security V
401 South State Street
Room 615
Chicago, IL 60605
(312) 793-5700

Indiana Department of Employment V
and Training Services
10 North Senate Avenue
Room 331
Indianapolis, IN 46204
(317) 232-3270

Department of Employment Services VII
1000 East Grand Avenue
Des Moines, IA 50319
(515) 281-5365

Department of Human Resources VII
401 Topeka Boulevard
Topeka, KS 66603-3182
(913) 296-7474

Department for Employment Services IV
275 East Main Street, 2nd Floor West
Frankfort, KY 40621
(502) 564-5331

Dept. of Employment and Training VI
P.O. Box 94040
Baton Rouge, LA 70804-9094
(504) 342-3011

Bureau of Employment Security I
P.O. Box 309
Augusta, ME 04330
(207) 287-3788

Department of Economic and III
Employment Development
1100 North Eutaw Street
Room 600
Baltimore, MD 21201
(410) 333-5070

Department of Employment and Training I
Charles Hurley Building
Government Center
Boston, MA 02114
(617) 727-6600

Michigan Employment Security Commission V
7310 Woodward Avenue
Detroit, MI 48202
(313) 876-5500

Minnesota Department of Jobs and Training V
390 North Robert Street
St. Paul, MN 55101
(612) 296-3711

Employment Security Commission IV
P.O. Box 1699
Jackson, MS 39215-1699
(601) 961-7400

Division of Employment Security VII
421 East Dunkin Street
Jefferson City, MO 65101
(314) 751-3976

Department of Labor and Industry VIII
State Capitol
Helena, MT 59624
(406) 444-3555

Department of Labor VII
Box 94600
Lincoln, NE 68509-4600
(402) 471-3405

Nevada Employment Security Department IX
500 East Third Street
Carson City, NV 89713
(702) 687-4635

Department of Employment Security I
32 South Main Street
Concord, NH 03301
(603) 228-4000

New Jersey Department of Labor II
CN 110 John Fitch Plaza
Trenton, NJ 08625-0110
(609) 292-2323

New Mexico Department of Labor VI
P.O. Box 1928
Albuquerque, NM 87103
(505) 841-8409

State of New York Department of Labor II
State Office Building Campus
Building 12, State Campus
Albany, NY 12240
(518) 457-2270

Employment Security Commission IV
P.O. Box 25903
Raleigh, NC 27611
(919) 733-7546

Job Service VIII
P.O. Box 1537
Bismarck, ND 58502
(701) 224-2836

Ohio Bureau of Employment Services V
145 South Front Street
Columbus, OH 43125
(614) 466-2100

Oklahoma Employment Security Commission VI
Will Rogers Memorial Office Building
Oklahoma City, OK 73105
(405) 557-0200

Oregon State Employment Department X
875 Union Street NE
Salem, OR 97311
(503) 378-3208

Pennsylvania Department of Labor and Industry III
Seventh and Forster Streets
Harrisburg, PA 17121
(717) 787-1745

Bureau of Employment Security II
506 Munoz Rivera Ave.
Hato Rey, PR 00918
(809) 754-5394

Department of Employment and Training I
101 Friendship Street
Providence, RI 02903
(401) 277-3600

Employment Security Commission IV
PO Box 995
Columbus, SC 29202
(803) 737-2617

Department of Labor
700 Governors Drive
Pierre, SD 57501
(605) 773-3101

Department of Employment Security IV
12th Floor
Volunteer Plaza Building
500 James Robinson Parkway
Nashville, TN 37245
(615) 741-2131

Texas Employment Commission VI
Room 638
TEC Building
15th & Congress Avenue
Austin, TX 78778
(512) 463-2652

Department of Employment Security VIII
140 East 300 South
Salt Lake City, UT 84111
(801) 536-7401

Department of Employment and Training I
P.O. Box 488
Montpelier, VT 05602
(802) 229-0311

Virginia Employment Commission III
P.O. Box 1358
Richmond, VA 23211
(804) 786-3001

Department of Labor II
2164 King Cross Street
St. Croix, VI 00820-466
(809) 773-1440

Employment Security Department X
P.O. Box 9046
Mail Stop 6000
Olympia, WA 98507-9046
(206) 753-5114

Bureau of Employment Programs III
112 California Avenue
Charleston, WV 25305-0112
(304) 558-2630

Dept. of Industry, Labor, and
Human Relations V
PO Box 7946
Madison, WI 53707
(608) 266-7552

Department of Employment VIII
P.O. Box 2760
Casper, WY 82602
(307) 235-3650

APPENDIX 7

Visa Issuing Posts

C = Consulate
CG= Consulate General
NIV= Non-Immigrant Visas Only
US Interests Section =U.S. Interests Section, Swiss Embassy, Havana
M = Mission

Country	Post	Designation	Visa Services
Algeria	Algiers	Embassy	All
	Oran	C	NIV
Antigua and Barbuda	St. Johns	Embassy	None
Argentina	Buenos Aires	CG	All
Australia	Canberra	Embassy	NIV
	Melbourne	CG	NIV
	Perth	CG	All
	Sydney	CG	All
Austria	Vienna	Embassy	All
Bahamas	Nassau	Embassy	All
Bahrain	Manama	Embassy	All
Bangladesh	Dhaka	Embassy	All
Barbados	Bridgetown	Embassy	All
Belgium	Antwerp	CG	NIV
	Brussels	Embassy	All
Belize	Belize City	C	All
Benin	Cotonou	Embassy	All
Bermuda	Hamilton	CG	All
Bolivia	La Paz	Embassy	All
Botswana	Gaborone	Embassy	All

Brazil	Brasilia	Embassy	NIV
	Porto Alegre	C	NIV
	Recife	C	NIV
	Rio de Janeiro	CG	All
	São Paulo	CG	NIV
Brunei	Bandar Seri Begawan	Embassy	NIV
Bulgaria	Sofia	Embassy	All
Burkina Faso	Ouagadougou	Embassy	All
Burundi	Bujumbura	C	All
Cameroon	Douala	C	NIV
	Yaoundé	Embassy	All
Canada	Calgary	CG	All
	Halifax	CG	NIV
	Montréal	CG	All
	Ottawa	Embassy	NIV
	Quebec City	CG	NIV
	Toronto	CG	All
	Vancouver	CG	All
Cape Verde	Praia	Embassy	All
Central African Republic	Bangui	Embassy	All
Chad	N'Djamena	C	NIV
Chile	Santiago	Embassy	All
China	Beijing	Embassy	NIV
	Chengdu	CG	NIV
	Guangzhou	CG	All
	Shanghai	CG	All
	Shenyang	CG	NIV
Colombia	Barranquilla	C	NIV
	Bogota	Embassy	All
Comoros	Moroni	Embassy	NIV
Congo	Brazzaville	Embassy	All
Costa Rica	San Jose	Embassy	All
Côte d'Ivoire	Abidjan	Embassy	All
Croatia	Zagreb	CG	All
Cuba	Havana	US Interests Section	All
Cyprus	Nicosia	Embassy	All

Czech Republic	Prague	Embassy	All
Denmark	Copenhagen	Embassy	All
Djibouti, Republic of	Djibouti	Embassy	All
Dominican Republic	Santo Domingo	Embassy	All
Ecuador	Guayaquil	CG	All
	Quito	Embassy	NIV
Egypt	Alexandria	CG	NIV
	Cairo	Embassy	All
El Salvador	San Salvador	Embassy	All
Equatorial Guinea	Malabo	Embassy	NIV
Ethiopia	Addis Ababa	C	All
Fiji	Suva	Embassy	All
Finland	Helsinki	Embassy	All
France	Bordeaux	CG	NIV
	Lyon	CG	NIV
	Marseille	CG	NIV
	Paris	Embassy	All
French Caribbean Dept.	Martinique	CG	All
Gabon	Libreville	Embassy	All
The Gambia	Banjul	Embassy	All
Georgia	Tbilisi	C	NIV
Germany, Federal Republic of	Berlin	M	NIV
	Bonn	Embassy	NIV
	Frankfurt am Main	CG	All
	Hamburg	CG	NIV
	Munich	CG	NIV
	Stuttgart	CG	None
Ghana	Accra	Embassy	All
Greece	Athens	Embassy	All
Grenada	St. George's	Embassy	None
Guatemala	Guatemala	Embassy	All
Guinea	Conakry	Embassy	NIV
Guinea-Bissau	Bissau	Embassy	All
Guyana	Georgetown	Embassy	All
Haiti	Port-au-Prince	Embassy	All
Honduras	Tegucigalpa	Embassy	All

Hong Kong	Hong Kong	CG	All
Hungary	Budapest	Embassy	All
Iceland	Reykjavik	Embassy	All
India	Bombay	CG	All
	Calcutta	CG	All
	Madras	CG	All
	New Delhi	Embassy	All
Indonesia	Jakarta	Embassy	All
	Medan	C	NIV
	Surabaya	C	NIV
Ireland	Dublin	Embassy	All
Israel	Tel Aviv	Embassy	All
Italy	Florence	CG	NIV (San Marino citizens only)
	Milan	CG	NIV
	Naples	CG	All
	Rome	Embassy	NIV
Jamaica	Kingston	Embassy	All
Japan	Fukuoka	C	NIV
	Naha	CG	All
	Osaka-Kobe	CG	NIV
	Sapporo	CG	NIV
	Tokyo	Embassy	All
Jordan	Amman	Embassy	All
Kenya	Nairobi	Embassy	All
Korea	Pusan	C	NIV
	Seoul	Embassy	All
Kuwait	Kuwait	Embassy	All
Kyrgyzstan	Bishkek	Embassy	All
Laos	Vientiane	Embassy	All
Latvia	Riga	Embassy	All
Lebanon	Beirut	Embassy	None
Lesotho	Maseru	Embassy	NIV
Liberia	Monrovia	Embassy	All
Lithuania*	Vilnius	Embassy	NIV
Luxembourg	Luxembourg	Embassy	NIV
Madagascar	Antananarivo	Embassy	All
Malawi	Lilongwe	Embassy	All

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* At press time, embassies in the newly independent countries are in a state of transition and are expected to expand services in the near future.

Malaysia	Kuala Lumpur	Embassy	All
Mali	Bamako	Embassy	All
Malta	Valletta	Embassy	All
Marshall Islands	Majuro	US Rep.	NIV
Mauritania	Nouakchott	Embassy	NIV
Mauritius	Port Louis	Embassy	All
Mexico	Ciudad Juarez/Chihuahua	CG	All
	Guadalajara, Jalisco	CG	NIV
	Hermosillo	C	NIV
	Matamoros	C	NIV
	Mazatlan	C	NIV
	Merida	C	NIV
	Mexico City	Embassy	NIV
	Monterrey	CG	NIV
	Nuevo Laredo	C	NIV
	Tijuana	CG	NIV
Micronesia, Federated States of	Kolonia	Embassy	All
Moldova	Chisinav	Embassy	All
Mongolia, People's Republic of	Ulaanbaatar	Embassy	NIV
Morocco	Casablanca	CG	All
	Rabat	Embassy	NIV
Mozambique	Maputo	Embassy	All
Myanmar (formerly Burma)	Yangon	Embassy	All
Nepal	Kathmandu	Embassy	All
Netherlands	Amsterdam	CG	All
	The Hague	Embassy	(A, G,C-2, C3 only)
Netherlands Antilles	Curaçao	CG	None
New Zealand	Auckland	CG	All
	Wellington	Embassy	NIV
Nicaragua	Managua	Embassy	All
Niger	Niamey	Embassy	All
Nigeria	Kaduna	CG	NIV
	Lagos	Embassy	All
Norway	Oslo	Embassy	All
Oman	Muscat	Embassy	All
Pakistan	Islamabad	Embassy	NIV
	Karachi	CG	All
	Lahore	CG	NIV
	Peshawar	C	None
Palau, Republic of	Koror	Status Liaison Office	NIV

Panama	Panama City	Embassy	All
Papua New Guinea	Port Moresby	Embassy	All
Paraguay	Asunción	Embassy	All
Peru	Lima	Embassy	All
Philippines	Manila	Embassy	All
Poland	Krakow	C	NIV
	Warsaw	Embassy	All
Portugal	Lisbon	Embassy	All
	Ponta Delgada	C	All
	Sao Miguel, Azores	C	All
Romania	Bucharest	Embassy	All
Russia	Moscow	Embassy	All
Saudi Arabia	Dharan	CG	NIV
	Jeddah	CG	NIV
	Riyadh	Embassy	All
Senegal	Dakar	Embassy	All
Serbia-Montenegro	Belgrade	Embassy	All
Seychelles	Victoria	Embassy	All
Sierra Leone	Freetown	Embassy	All
Singapore	Singapore	Embassy	All
Slovakia	Bratislava	Embassy	None
Slovenia	Ljubljana	Embassy	NIV
South Africa	Capetown	CG	NIV
	Durban	CG	NIV
	Johannesburg	CG	All
	Pretoria	Embassy	NIV
Spain	Barcelona	CG	None
	Madrid	Embassy	ALL
Sri Lanka	Colombo	Embassy	All
Sudan	Khartoum	Embassy	All
Suriname	Paramaribo	Embassy	All
Swaziland	Mbabane	Embassy	NIV
Sweden	Stockholm	Embassy	All
Switzerland	Bern	Embassy	All
	Zurich	CG	NIV
Syria	Damascus	Embassy	All
Tajikistan	Durhanbe	Embassy	All
Taiwan	Taipei	American	All

		Institute	
Tanzania	Dar es Salaam	Embassy	All
Thailand	Bangkok	Embassy	All
	Chaing Mai	CG	NIV
Togo	Lomé	Embassy	All
Trinidad and Tobago	Port of Spain	Embassy	All
Tunisia	Tunis	Embassy	All
Turkey	Ankara	Embassy	All
	Istanbul	CG	All
Turkmenistan	Ashgabat	Embassy	NIV
Uganda	Kampala	Embassy	All
Ukraine	Kiev	Embassy	All
United Arab Emirates	Abu Dhabi	Embassy	All
	Dubai	CG	NIV
United Kingdom	Belfast, Northern Ireland	CG	All
	London	Embassy	All
Uruguay	Montevideo	Embassy	All
Uzbekistan	Tashkent	Embassy	NIV
Venezuela	Caracas	Embassy	All
	Maracaibo	C	NIV
Yemen Arab Republic	Sanaa	Embassy	All
Zaire	Lubumbashi	CG	NIV
Zambia	Lusaka	Embassy	All
Zimbabwe	Harare	Embassy	All

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APPENDIX 8

References

Statutes and Regulations

Bender's Immigration and Nationality Act Pamphlet. 1993. Matthew Bender, 1275 Broadway, Albany, NY 12201, (518) 487-3000. $60.

Code of Federal Regulations. Title 8, "Aliens and Nationality." 1994. Office of the Federal Register, Washington, DC. Order # 869-022-00026-8 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $22 ea.

______Title 20, "Employees' Benefits." 1994, parts 500–end. Office of the Federal Register, Washington, DC. Order # 869-022-00065-9 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $31 ea.

______Title 22, "Foreign Relations," parts 1-299. 1994. Office of the Federal Register, Washington, DC. Order # 864-022-00075-6 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $32 ea.

______Title 22, "Foreign Relations," parts 300-end. 1994. Office of the Federal Register, Washington, DC. Order # 869-022-00076-4 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $23.

Individual titles of the *Code of Federal Regulations* are updated annually and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Immigration and Nationality Act, 9th ed. 1992. Committee on the Judiciary, U.S. House of Representatives, Washington, DC. Out of print.

Subscription Services and Publications

Federal Register. Office of the Federal Register, Washington, DC. Annual subscriptions available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. $490 per year.

Contains proposed and final changes in regulations (between yearly printing of bound volumes of the *Code of Federal Regulations*), grant notices, and other announcements from Federal agencies.

Foreign Affairs Manual. Vol. 9, Visas, parts 1-4. U.S. Department of State, Washington, DC. Ordering information available from Distribution Service Branch, FAIM/PS/DS, Room B-845, Department of State, Washington, DC 20520.

This volume of the *Foreign Affairs Manual* contains Department of State interpretations and policy instructions, updated as changes occur, regarding visa issuance.

Immigration Law Report. Clark Boardman Callaghan, 155 Pfinsten Road, Deerfield, IL 60015-9917. Bimonthly. Annual subscription, $275.

Immigration Law Report covers immigration with a special emphasis on developments affecting the business community, including universities as employers of nonimmigrant students and scholars.

Interpreter Releases: Report and Analysis of Immigration and Nationality Law. Federal Publications, Inc., 1120 20th Street, NW, Suite 500 South, Washington, DC 20036-3484, (615) 377-3322. Annual subscription, Profit org. $480, Non-profit $395.

Interpreter Releases is published four times per month and contains updates on immigration and related matters, analyses of immigration legislation and regulations, and reprints of significant laws, regulations, and policy statements.

NAFSA Government Affairs Bulletin. NAFSA Publications, PO Box 1604, Cranberry Township, PA 16066, (800) 836-4994. Annual subscription rates: $45 members, $75 nonmembers. Overseas subscribers pay an additional $10.

Published 10 times per year, the *Government Affairs Bulletin* features the latest information on developments in state, national, and foreign governments affecting international educational exchange.

NAFSA Newsletter. NAFSA: Association of International Educators, 1875 Connecticut Ave, NW, Suite 1000, Washington, DC 20009-5728. Annual subscription rates: $35 in the United States; $38 for Canada and Mexico; $50 for other destinations. Included as a benefit of NAFSA membership without additional charge.

Operations Instructions, Regulations, and Interpretations. U.S. Immigration and Naturalization Service, Washington, DC. Order #927-002-00000-1 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Annual subscription: $184 per subscription.

A complete collection of INS directives and policy interpretations, updated as changes occur.

Visa Bulletin. Visa Office, U.S. Department of State, Bureau of Consular Affairs, Washington, DC 20520, (202) 647-0510. No charge.

A monthly report on availability of immigrant visa numbers and other information.

Directories

AILA U.S. Consular Posts Handbook. American Immigration Lawyers Association, Publications Department, 1400 Eye Street, NW, Suite 1200, Washington, DC 20005. $18 members; $22.50 nonmembers. (202) 371-9377.

Worldwide guide to State Department consular posts.

Congressional Yellow Book. Published quarterly by Monitor Publishing, 104 Fifth Avenue, New York, NY 10011, (212) 627-4140. Yearly subscriptions are $225.

Who's who on Capitol Hill, including staff titles, addresses, and phone numbers, and biographical information on members of Congress.

Diplomatic List. 1994. U.S. Department of State (publication no. 7894), Washington, DC. Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. $8.50 per year.

Addresses and phone numbers of foreign government embassies and consular offices located in Washington, DC; includes names and titles of staff members.

Federal Yellow Book. Published quarterly by Monitor Publishing, 104 Fifth Avenue, New York, NY 10011, (212) 627-4140. Yearly subscriptions are $225.

Who's who in the federal agencies, including staff titles, addresses, and phone numbers.

Foreign Consular Posts in the United States. 1986. U.S. Department of State, Washington, DC. Out of print.

Key Officers of Foreign Service Posts. U.S. Department of State, Washington, DC. Order #744-006-00000-7 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. $5 per year.

Names U.S. diplomats posted overseas.

U.S. Government Guides and Resources

"Codes for Educational and Cultural Exchange." Revised 1986. U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547. No charge.

Instructions and code listings for use by J-1 exchange-visitor programs using Form IAP-66.

"Exchange Visitor Skills List." U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547. No charge.

"Handbook for Employers." U.S. Immigration and Naturalization Service, Washington, DC. Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

A step-by-step explanation of what employers must do to certify employment eligibility; includes Form I-9 and a list of INS offices.

"Instructions for Filing Applications for Alien Employment Certification for Permanent Employment in the United States." U.S. Employment and Training Administration, Department of Labor, Washington, DC. Also available through state employment service offices.

Contains the application form for a labor certification.

"Scholarships and Fellowships." Internal Revenue Service publication 520. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

"Tax Information for Visitors to the U.S." Internal Revenue Service publication 513. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

Technical Assistance Guide 656, Labor Certifications. Employment and Training Administration, U.S. Department of Labor, Washington, DC. Out of print.

Addressed to Department of Labor employees, the "TAG" gives detailed guidelines concerning the alien labor certification program.

"U.S. Tax Guide for Aliens." Internal Revenue Service publication 519. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free.

"U.S. Tax Treaties." Internal Revenue Service publication 901. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free.

"Volunteer Assistor's Guide—Foreign Student Text." Internal Revenue Service publication 678-FS (Revised 11/91). Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free.

"Withholding of Tax on Nonresident Aliens and Foreign Corporations." Internal Revenue Service publication 515. Order from IRS, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, (800) 829-FORM. Free of charge.

Nongovernment Guides and Resources

Employers' Immigration Compliance Guide. 1987. Hope M. Frye and H. Ronald Klasko. Matthew Bender, 1275 Broadway, Albany, NY 12201, (518) 487-3000. Out of print, Nov. 1993.

GRAC Tax Pack: Handouts for Use in the Advising Office. January 1994, 88 pages. NAFSA: Association of International Educators, 1875 Connecticut Avenue, N.W., Suite 1000, Washington, DC 20009-5728, (202) 939-3110. $20 for members; $30 for non-members.

Immigration Act of 1990. National Lawyers Guild. Clark Boardman Company, Ltd., 375 Hudson Street, New York, NY 10014. $65.

Immigration Law. Abridged ed. Charles Gordon and Ellen Gittel Gordon. Matthew Bender and Company, Inc., 1275 Broadway, Albany, NY 12201, (518) 487-3000. $190, includes one year updating service.

Previously entitled *Immigration Law and Procedure, Desk Edition,* this single volume publication is abridged from the 12 volume *Immigration Law and Procedure* (see below).

Immigration Law and Defense. Immigration Project of the National Lawyers Guild. Clark Boardman Company, Ltd., 375 Hudson Street, New York, NY 10014. $195.

Immigration Law and Practice. 3rd ed. Jack Wasserman. Joint Committee on Continuing Legal Education, American Bar Association, and the American Law Institute, Philadelphia, PA. Order #B-238 from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104. $20.

Immigration Law and Procedure. 12 vols. Charles Gordon and Harry Rosenfield. Matthew Bender and Company, Inc., 1275 Broadway, Albany, NY 12201, (518) 487-3000. $1475, includes one year updating service.

Immigration Procedures Handbook: A How-to-Guide for Legal and Business Professionals. 1991. Austin T. Fragomen, Alfred J. Del Rey, and Steven C. Bell. Clark Boardman Company, 375 Hudson Street, New York, NY 10014. $135.

The Rights of Aliens: An American Civil Liberties Union Handbook. 1977. David Carliner. Avon Books, 959 8th Avenue, New York, NY 10019. Out of print.

Special Update: 1986 Immigration and Nationality Acts. 1987. Lawrence B. Kleinman for the National Immigration Project, National Lawyers Guild. Clark Boardman Company, 375 Hudson Street, New York, NY 10014. $75.

Steel on Immigration Law. 1985. Richard D. Steel. Lawyers Cooperative Publishing Company, Aqueduct Building, Rochester, NY 14694.

Understanding the 1986 Immigration Law. 1987. Maurice A. Roberts and Stephen Yale-Loehr. Federal Publications, Inc., 1120 20th Street, N.W., Washington, DC 20036. Out of print.

Understanding the Immigration Act of 1990. Stephen Yale-Loehr. Federal Publication, Inc., 1120 20th Street, N.W., Washington, DC 20036. $49.95.

U.S. Federal Income Tax Guide for International Students and Scholars. Annual. Deborah L. Vance and Deborah Ahlstedt. NAFSA Publications, PO Box 1604, Cranberry Township, PA 16066, (800) 836-4994. $20 for members; $30 for nonmembers.

NAFSA's abridged guide to foreign-student taxation.

U.S. Taxation of International Students and Scholars—A Manual for Advisers and Administrators. February 1994. Bertrand M. Harding, Jr., and Norm Peterson. NAFSA Publications, PO Box 1604, Cranberry Township, PA 16066, (800) 836-4994. $35 for members of NAFSA and the Alliance for Educational and Cultural Exchange; $65 for nonmembers.

Authored by a tax attorney specializing in tax-exempt organizations and copublished by NAFSA and the Alliance, the manual delivers a thorough treatment of taxation, withholding, and reporting of scholarships, fellowships, and other grant payments made to foreign students, scholars, and faculty.

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APPENDIX 9

Countries Having Passport Agreements with the United States

Algeria
Antigua and Barbuda
Australia
Austria (*Reisepass* only)
Bahamas
Bangladesh (travel permits and passports)
Belgium
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany
Greece
Grenada
Guatemala
Guinea
Guyana
Honduras
Hong Kong (certificates of identity and passports)
Iceland
India
Iran
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Korea
Kuwait
Laos
Lebanon
Libya
Liechtenstein
Luxembourg
Madagascar
Malaysia
Malta
Mauritius
Mexico
Monaco
Morocco
Netherlands, The
New Zealand
Nicaragua (diplomatic and official passports only)
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Senegal
Singapore
Soviet Union (seamen only)*
Spain
Sri Lanka
Sudan

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*On 2 January 1992 the Office of Soviet Union Affairs at the Department of State became the Office of Independent States and Commonwealth Affairs. The address is Room 4229, U.S. Department of State, Washington, DC 20520. Telephone (202) 647-8956, Fax (202) 647-3506.

Suriname
Sweden
Switzerland
Syria
Thailand
Trinidad and Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Yugoslavia*

Travel documents issued by the government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of 6 months beyond the specified expiration date.

Source: Department of State Public Notice 633, *Federal Register*, 4 June 1992, p. 23608. Amended by Public Notice 954, *Federal Register*, 26 February 1986, p. 6853. Amended by Public Notice 970, *Federal Register*, 3 July 1986, p. 24467; Public Notice 1010, *Federal Register*, 13 May 1987, p. 18037; Public Notice 1022, *Federal Register*, 14 August 1987, p. 30274; Public Notice 1061, *Federal Register*, 24 May 1988, p. 18646; Public Notice 1380, *Federal Register*, 1 May 1991, p. 20061.

Federal Register notices are incorporated into the Foreign Affairs Manual, 41.104 Notes, N2.1 "Extending Validity Beyond Expiration Date in Passport."

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* The Office of Eastern Europe and Yugoslav Affairs at the Department of State is now the Office of Eastern European Affairs. The address is Room 5221, U.S. Department of State, Washington, D.C. 20520. Telephone (202) 647-3052, Fax (202) 647-0555.

APPENDIX 10

Canadian Visitor Visa Exemptions

(as of May 1994)

The following people are exempt from Canadian visitor visa requirements:

1. Citizens of Andorra, Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brunei, Costa Rica, Cyprus, Denmark, Dominica, Finland, France, Germany, Greece, Grenada, Iceland, Ireland, Israel,* Italy, Japan, Kiribati, Korea (South), Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Monaco, Namibia, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent, San Marino, Saudi Arabia, Singapore, Solomon Islands, Spain, Swaziland, Sweden, Switzerland, Tuvalu, United States,** Vanuatu, Venezuela, Western Samoa, and Zimbabwe.

*except those holding the orange Israeli Travel Document in lieu of National Passport.

** The people of Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are non-voting U.S. citizens and are visa exempt. Residents of American Samoa and Palau are U.S. nationals and are visa exempt.

The Marshall Islands and Micronesia concluded a Compact of Free Association with the United States in 1986. These islands thus became self governing. Residents of the Marshall Islands and Micronesia are neither U.S. citizens nor U.S. nationals and require visitor visas.

2. British Citizens and British Overseas Citizens who are readmissable to the United Kingdom.

3. British dependent territories citizens from Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena, or the Turks and Caicos Islands.

4. Persons holding passports or travel documents issued by the Holy See.

5. U.S. Permanent Residents, i.e. holders of U.S. Alien Registration Cards (Form I-551).

6. Holders of U.S. Temporary Resident Card (Form I-688) with the following notation on the back:

"Temporary evidence of lawful admission for permanent residence and employment authorized. Valid for one year from the expiration date on the reverse side of this I-688. Valid for travel outside the United States if the named bearer has not abandoned his or her residence and is returning after a temporary absence abroad not exceeding one year. Presentation of a valid document will authorize a transportation line to accept the named bearer on board for travel to the United States without liability under Section 273 of the Immigration and Nationality Act. This card is void if altered and must be carried at all times."

7. Persons who have been granted "Advance Parole" to the United States (Form I-512) who are in possession of a letter from a U.S. consulate in Canada inviting them to an interview concerning their American immigration application.

8. Persons holding passports containing a valid "Diplomatic Acceptance," "Consular Acceptance," or "Official Acceptance" stamp issued by the Chief of Protocol for the Department of External Affairs on behalf of the Government of Canada.

9. Nationals of the United States and persons lawfully admitted to the United States for permanent residence.

10. Persons in possession of valid student authorizations or employment authorizations seeking to return as visitors to Canada from the United States or St. Pierre and Miquelon where the authorizations were issued prior to the departure of those persons from Canada.

11. Persons visiting Canada who, during that visit, also visit the United States or St. Pierre and Miquelon and return to Canada therefrom as visitors within the period authorized on their initial entry or any extension thereto.

12. Persons who are in transit through Canada solely for the purpose of refuelling and who have been legally admitted to the United States and are on a flight originating in the United States.

APPENDIX 11

NAFSA Government Regulations Advisory Committee

August 1994

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NAFSA Position on J-1 Visitors

A number of schools have reported that they have been advised that "repeat visitors" are viewed with disfavor as a matter of policy. NAFSA finds the statement of such a policy to be completely unexpected and profoundly disturbing.

Nothing in the statute, regulations, or code book indicates that there is any impropriety in having persons use the exchange visitor program more than once. It is, in fact, contrary to the whole concept of international academic exchange at the college or university level. While the majority of our students and scholars do simply come, complete a program, and move on with their careers, there are others, particularly at senior levels, who are involved in research or professional practice on a global scale, and who are part of ongoing international projects. The scholars involved in these programs are unique or rare in their area of specialty; these scholars are not easily interchangeable with others. Therefore, it is essential that these individuals return often to continue the collaboration with their U.S. counterparts.

They may come here for a few weeks or a few months or every few years for teaching appointments or consultative research meetings. Frequently these relationships involve reciprocal visits by the American counterpart, which directly enhances the Agency's concept of exchange. Because of their standing in their fields and their commitment to sharing knowledge and skills, they open up opportunities both for the many "one-time" exchange participants who use the program and for our U.S. citizen students and scholars who go abroad. Many schools have used the exchange visitor program for multiple visits for these scholars in the past and have considered them to be exemplary of one of the very best uses of the program.

Another group of people affected by a prohibition against repeat visitors are those who come to the U.S. and complete a particular program, leave the U.S. for a period of time, and return later for a completely different program. For example, an individual who received a Ph.D. from a U.S. university would be prevented from later being a USIA Fulbright scholar or returning to the same university as a visiting professor. A short term scholar who attended a meeting and presented a paper could not return later as a visiting professor. A student in a foreign high school or college who had participated in a youth exchange could not return to get a U.S. undergraduate or graduate degree. Surely it is not the intention of the Agency to preclude permanently a participant in one program from any future participation or to subject everyone who would wish to do so to a lengthy review by USIA for special permission.

NAFSA understands that the Agency may have concerns about bringing in repeat visitors to the exclusion of new visitors, but such a concept implies that there are a limited number of exchange visitor "slots" which must be meted out. Clearly this is not the case on college and university campuses. Individual incidents of abuse should be dealt with individually, not with a broad policy statement which harms both the public image and daily administration of the Exchange Visitor Program. If the Agency has promulgated a policy which would eliminate the people described above from the Exchange Visitor Program, please refer us to the proper statute or regulation so that we may advise colleges and universities that ongoing teaching, research, and exchange opportunities for hundreds of students and scholars are in jeopardy.

APPENDIX 13

NAFSA Government Regulations Advisory Committee (GRAC) Statement on J Exchange Visitor Home Country Physical Presence Requirement and Withholding of Form IAP-66

October 1993

The following statement was produced by NAFSA's Government Regulations Advisory Committee in response to a number of requests for guidance about issuing IAP-66 forms to exchange visitors who have either applied for or received a waiver of the home residency requirement. It is hoped that this statement will provide a basis for further discussion among professionals in the field at upcoming NAFSA regional conferences. It is such interaction with our colleagues which helps us to formulate thoughtful, well reasoned, responsible responses to such situations.

Statement by the Government Regulations Advisory Committee

Subject: The J Exchange Visitor Home Country Physical Presence Requirement, and withholding of the Form IAP-66

The Issue

Certain Exchange Visitors are subject to the two year home country physical presence requirement (HCPPR) established by statute in the Immigration and Nationality Act (as amended) Section 212(e), and implemented under Title 22, Section 514.44 of the Code of Federal Regulations as published by the United States Information Agency (USIA) in the Federal Register of 19 March 1993, pages 15180-15220. Anyone who is subject to the requirement may apply for a waiver of same as provided for in the same section of the regulations.

The application procedure and the format of the waiver itself are so complex, and involve so many government agencies and interested parties that, over the life of the Exchange Visitor Program there have been differing opinions as to what constitutes an application for or grant of a waiver, and whether Form IAP-66 for extension, transfer, or other purposes must be withheld, i.e. not issued, for an individual who has begun or completed the procedure.

The regulations are silent on the issue of withholding Form IAP-66 in the context of a waiver application. There is, therefore, no direction or requirement to withhold Form IAP-66 from an Exchange Visitor who may be involved in a waiver process or who holds a waiver. Nor is there any specific permission to issue the form.

Consistency Considerations

The term "application for waiver" is not defined. The process may involve negotiations with and actions by the home government, a U.S. government agency, or a myriad of funding or sponsoring organizations. It may also involve determinations as to persecution or hardship made by several U.S. government agencies. The only clearly definable moment of application is the submission of the biographic data sheet by the Exchange Visitor to the USIA. This begins a process of review which takes several months or longer.

Although a favorable recommendation from USIA is required, the waiver is "granted" by the Immigration and Naturalization Service (INS) and the individual is notified by letter or by the granting of an INS benefit which is dependent upon a waiver.

There is no reliable way for a sponsor to know if or when a waiver application has been filed or a waiver granted. The Exchange Visitor, a government agency, or an employer may begin or even complete a waiver process without any communication with the sponsor. While the sponsor might query the Exchange Visitor regarding waiver applications prior to completing a Form IAP-66, it is unlikely that the individual will have sufficient knowledge of the complex process to provide accurate, reliable information.

Further, the issue arises only when an Exchange Visitor needs a new Form IAP-66 for extension, transfer, family travel etc. Any inquiry procedure instituted by the sponsor would affect only those people who needed this particular service of the sponsor, and such a procedure would of necessity produce inconsistent results. For example, a student admitted to a Ph.D. program might have a Form IAP-66 which covers a period of five years while the Form IAP-66 for a research associate might be issued initially for only one year. The student could carry and use the same Form IAP-66 for five years. The research associate, on the other hand, might need annual extensions and therefore annual Forms IAP-66.

Discriminatory Practices and Legal Liability
It is clear that under current regulations there is no clear, consistent, fair, and equitable way to withhold Form IAP-66 from an otherwise qualified individual who may have considered or taken some action for waiver. The inability to be consistent in the withholding of Forms IAP-66 immediately raises the question of legal liability for discriminatory practices. Sponsors are cautioned to discuss with legal counsel any line of inquiry or procedure which results in the withholding of Form IAP-66.

Integrity of the Exchange Visitor Program
One of the concerns voiced regarding waiver applications is their effect on the integrity and public image of the Exchange Visitor Program. Members of the USIA Exchange Visitor Program Services staff have stated the position, orally, that an application for or obtaining of a waiver is acting in bad faith and an abuse of the Program because it permits the Exchange Visitor to use the Program as an avenue to another visa class rather than meeting the obligation, willingly accepted, to return home to share the benefits of the exchange experience with the home country. It is undeniably true that obtaining a waiver opens options for Exchange Visitors who were formerly subject to the HCPPR.

A salient fact which is often ignored is that receipt of a waiver provides no exceptional advantage, and in fact puts the formerly subject Exchange Visitor in exactly the same position as the Exchange Visitor who was never subject. While it is true that many Exchange Visitors who obtain waivers seek other visa classes, it is also true that many others who are subject do not seek waivers and simply return home. There is currently no statistical evidence available to show that the nonreturn rate for individuals who are subject is any greater than the nonreturn rate for those who were never subject.

The very existence of waiver options and procedures indicates that both the U.S. government and foreign governments have an interest in having certain Exchange Visitors released from the requirement, as it is only with the support of one or both governments that a waiver may be obtained. Applying for and obtaining a waiver is clearly a legal act anticipated and permitted by the legislation, the procedures for which are described in the regulations. It is difficult to defend a seemingly arbitrary action such as withholding a Form IAP-66 from an Exchange Visitor who is engaged in the activities specified for his program and who is otherwise maintaining status. Indeed, withholding the Form IAP-66 may result in the Exchange Visitor falling out of status and becoming an "undocumented" alien.

The integrity of the Exchange Visitor Program is not threatened by Exchange Visitors acting within the regulations or by sponsors issuing Forms IAP-66 to these individuals who are continuing to meet the requirements and engage in the appropriate activities of the program. Indeed the integrity of the Exchange Visitor Program is enhanced by a fair and consistent application of the published regulations. Apparently inequitable actions such as the withholding of Form IAP-66, which may interrupt the exchange program and may be applied in a discriminatory manner based on unreliable information, have the potential to bring the USIA into public view in ways which do not reflect positively on the Exchange Visitor Program.

Other Considerations
There are two related issues on which the regulations are also silent.

First, the question remains as to whether a waiver, once granted, is permanent or "forever," or whether continuation in the current program or transfer to or entry into another program reactivates the HCPPR or "undoes" the waiver. The "irrevocable waiver" granted to Chinese can not be used as a guide since that was done as part of an Executive Order outside the regulations.

Another issue is the effect on Exchange Visitor status of having an immigrant petition approved in ones behalf. In most cases the filing of a petition is an action by a relative or an employer, not by the Exchange visitor. Nothing in the regulations requires or directs the withholding of Form IAP-66 in this circumstance, but other immigration issues arise. By statute Exchange Visitor status requires a residence abroad which one has no intention of abandoning. While judging the intent of an Exchange Visitor is not within the purview of a Responsible Officer, the existence of an approved petition is considered by consular officers abroad in their decision to grant a visa.

Both of these issues require further consideration, and neither is addressed in this statement. Sponsors are advised to make Exchange Visitors aware of these issues as appropriate.

Cautions
The Office of General Counsel of USIA has advised NAFSA that this is a complex legal and public policy issue and that their office is reviewing it and is considering options ranging from a published opinion, to regulatory changes, to new legislation which will provide further guidance to sponsors and Exchange Visitors. Representatives of the Office of General Counsel have stated that current regulations do not require or provide for the withholding of Form IAP-66 in the context of a waiver application.

In the past inquiries to the USIA Exchange Visitor Program Services Office have frequently resulted in admonitions to withhold Forms IAP-66 from those who have applied for or received waivers. Thus, the program sponsor who asks the Program Services Office whether to issue Form IAP-66 in a specific case is likely to be advised against it and told flatly to withhold the form, as this is a position stated orally by staff of the Program Services Office and sometimes confirmed in writing in individual cases.

Sponsors face risks either way. Withholding the Form IAP-66 may disrupt the Exchange Visitor's program and cause serious

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harm both to the individual and the greater Exchange Visitor Program. Issuing the Form IAP-66 may subject the sponsor to sanctions.

Sponsors are reminded to review the sanctions section (22 CFR 514.50) of the regulations. Sanctions may be imposed for: a single willful or negligent act or for a pattern of willful or negligent violations of or failures to comply with the regulations; actions that endanger the health, safety, or welfare of the Exchange Visitor; or actions which may bring the USIA into notoriety or disrepute. Since the withholding of a Form IAP-66 relative to a waiver application is not addressed in the regulations, issuing Form IAP-66 to a qualified individual can not be a violation or a failure to comply. Ostensibly issuing or withholding the Form IAP-66 should have no effect on the health, safety, or welfare of the Exchange Visitor, though it could be argued that withholding the Form IAP-66 may result in the Exchange Visitor losing funding support and health insurance coverage and falling into serious financial hardship. The remaining ground for sanctions, bringing the Agency into notoriety or disrepute, would appear to be more likely if the Form IAP-66 is withheld and disputes and hardships result, rather than if it is issued and the Exchange Visitor continues the program uninterrupted. This analysis not withstanding, the regulations permit the USIA to impose lesser sanctions at will and to discuss the bona fides of such sanctions after the sanctions have been imposed.

Conclusion

Until the Office of General Counsel of USIA has provided more substantive guidance, sponsors are strongly encouraged to establish a policy on whether Forms IAP-66 will be withheld, and if so, the circumstances under which they will be withheld and the procedures for doing so. Programs are further encouraged to review any such policies and procedures with their institutional legal counsel and to apply their policies consistently.

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